

**TITLE:** [PR-CM] Development Application DA03/0476.02 for an Amendment to Development Consent DA03/0476 for the Establishment of an Art Gallery/Coffee Shop to Include a Refreshment Room & Extend Trading Hours on Saturdays including the Option of Live Music at Lot 2 DP 575934 No. 17 Bambery Street, Fingal Head

**SUBMITTED BY:** Development Assessment

**FILE NUMBER:** DA03/0476 Pt4



**Civic Leadership**

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### **SUMMARY OF REPORT:**

This matter was previously reported to the Council Meeting of 17 July 2012.

The officers' report identified concerns in relation to the car parking issues relating to the use of the site, structures within the road reserve, trading hours and live music.

As such, Council resolved as follows:

*“that this item be deferred to the August Council meeting to allow for a Workshop to include the proponent, Councillors and Council staff, to address the issues.”*

A Councillors Workshop was held on 31 July 2012 and was attended by the applicant. At the Workshop the Councillors requested that Council officers investigate alternative off-site car parking to provide additional car parking spaces for the restaurant on an adjoining and adjacent public road reserve.

Council officers subsequently prepared a draft concept plan and preliminary cost estimate for car parking spaces to be provided in the road reserve along the Fingal Road frontage to the subject premises.

This proposal was forwarded to the applicant, who indicated concerns with the proposal. This addendum report has therefore been prepared to seek further direction from the Councillors on the options of either deferring the matter for further investigation or to reconsider the Council officers previous recommendation for the refusal of DA03/0476.02.

### **RECOMMENDATION:**

**That Council determines a preferred action on the following two options in respect of the Development Application DA03/0476.02 for an amendment to Development Consent DA03/0476 for the establishment of an art gallery/coffee shop to include a refreshment room and extend trading hours on Saturdays including the option of live music at Lot 2 DP 575934 No. 17 Bambery Street, Fingal Head:**

#### **OPTION 1**

**That the application be refused for the following reasons:**

- 1. The proposed modification is not considered to be consistent with the provisions of Clause 8(1)(c) of Tweed Local Environmental Plan 2000, in that the deletion of onsite parking provisions would have an unacceptable cumulative**

impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.

2. The proposed modification is not considered to be in accordance with the provisions of Council's Development Control Plan Section A2 – Site Access and Parking Code, in that onsite parking provisions are not being maintained.
3. The proposed modifications are considered not to be in the public interest, with regard to the precedent the proposal would set if parking requirements were removed.
4. The proposed modification to extend trading hours is not supported, given the non-compliance with existing approved trading hours.
5. The proposed modification to use the approved parking area for alternate uses is not supported, in that the area is required for on site car parking purposes.

It was also recommended that the applicant be formally advised in writing that:

- The three approved car spaces are to be reinstated on site;
- The use of live music on a Sunday is to cease;
- The development must comply with existing approved trading hours;
- A Section 138 application must be submitted to Council for approval within 60 days of the date of the written notification in relation to all structures within the road reserve;
- A development application must be submitted within 60 days of the date of the written notification in relation to all signage associated with the development.

OR

#### OPTION 2

This matter be deferred to provide the applicant with the opportunity to submit further details in response to Council's current compliance concerns, and that the officers submit a further report to Council's October meeting.

## REPORT:

**Applicant:** Ms A McKay  
**Owner:** Mr Richard B Steenson  
**Location:** Lot 2 DP 575934 No. 17 Bambery Street, Fingal Head  
**Zoning:** 2(a) Low Density Residential  
**Est Cost:** Not Applicable

## BACKGROUND:

As noted in the previous report on this matter to Council's meeting of 17 July 2012 (please refer to a copy of this report in Attachment 1), the application seeks the following:

- The deletion of the requirement for the provision of three on-site parking spaces (Condition 10);
- To use the parking area as an informal area for such uses as reception area, separated seating area for dog owners and smokers, dancing area, staff amenities, and community events such as exhibition openings also during inclement weather conditions; and
- Amend the trading hours of the business to 9.00pm on Friday and 8.00pm on Sunday (Condition 22).

Following a detailed assessment of the application, the application was recommended for refusal at the Council meeting of 17 July 2012, based on the following reasons:

1. *The proposed modification is not considered to be consistent with the provisions of Clause 8(1)(c) of Tweed Local Environmental Plan 2000, in that the deletion of onsite parking provisions would have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*
2. *The proposed modification is not considered to be in accordance with the provisions of Council's Development Control Plan Section A2 – Site Access and Parking Code, in that onsite parking provisions are not being maintained.*
3. *The proposed modifications are considered not to be in the public interest, with regard to the precedent the proposal would set if parking requirements were removed.*
4. *The proposed modification to extend trading hours is not supported, given the non-compliance with existing approved trading hours.*
5. *The proposed modification to use the approved parking area for alternate uses is not supported, in that the area is required for on site car parking purposes.*

It was also recommended that the applicant be formally advised in writing that:

- *The three approved car spaces are to be reinstated on site;*
- *The use of live music on a Sunday is to cease;*
- *The development must comply with existing approved trading hours;*
- *A Section 138 application must be submitted to Council for approval within 60 days of the date of the written notification in relation to all structures within the road reserve;*
- *A development application must be submitted within 60 days of the date of the written notification in relation to all signage associated with the development.*

Council resolved the following in respect of the officer's recommendation:

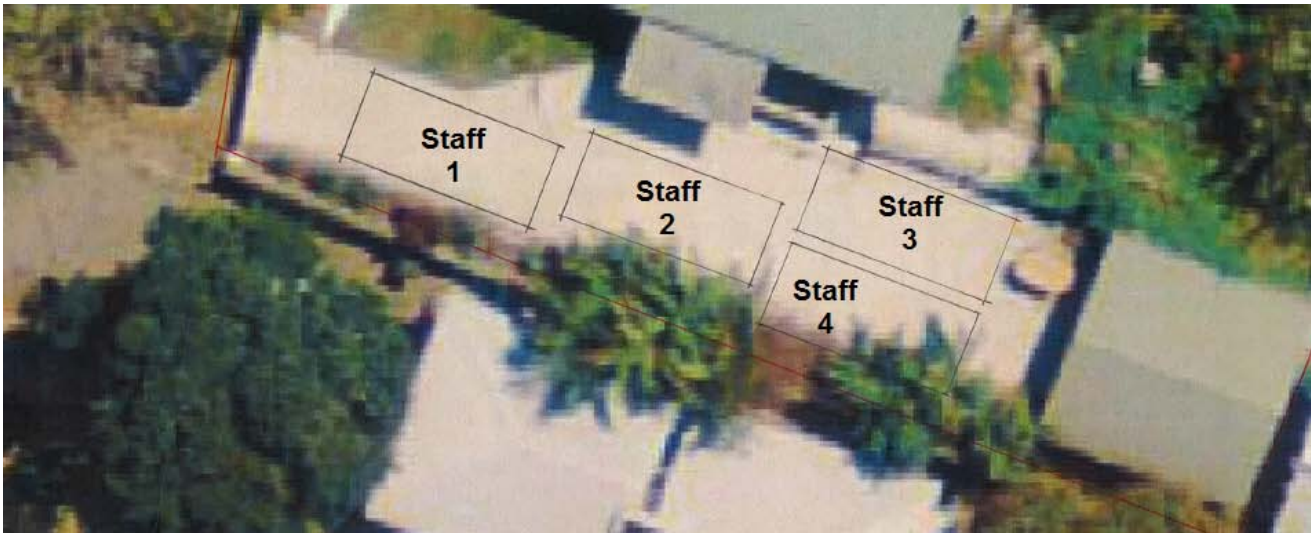
*“that this item be deferred to the August Council meeting to allow for a Workshop to include the proponent, Councillors and Council staff, to address the issues.”*

## **OUTCOME OF COUNCILLOR WORKSHOP:**

In accordance with the Council's resolution of the July meeting, a workshop was held on Tuesday 31 July 2012 to discuss this matter further, between the Councillors, Council's staff and the applicant. A summary of the main issues discussed at the Workshop is provided below.

### Staff parking

The applicant noted that staff parking could be provided on the driveway behind the existing residence. Council staff raised concern with there being no turn around facility, meaning the vehicles could not enter and leave the driveway in a forward direction. Vehicle stacking was also highlighted as an issue, with only two stack cars being allowed for staff under the provisions of DCP A2. Council staff noted that the four staff cars would result in three stacked cars on the driveway plus vehicles in the garage, as noted in Figure 1 below. The applicant noted that any issues could be managed by staff.



**Figure 1: Estimated stacked parking provisions on driveway**

### Customer parking

The applicant re-iterated a concern for the safety of the restaurant customers in relation to the approved three on-site spaces. Other options were discussed, such as the area to the south of the premises adjacent to Bamerry Street.

The applicant acknowledged that the use of the three on-site spaces triggered additional car parking requirements. Council staff advised that the use of the three spaces for dining purposes would require an additional three spaces, resulting in four spaces in total, when taking into consideration the one space being required by the Gallery.

The applicant suggested an amendment to Contribution Plan 23 – Offsite Parking to allow her to pay a contribution for the four spaces, rather than providing on-site parking. The Council officers advised that whilst this option may be possible, there was no nexus to do so, and as such would be difficult to support.

It was agreed that Council staff would investigate other options for parking in public areas adjacent to and adjoining the subject site.

### Structures within the road reserve

Currently the applicant has a licence agreement for the use of the road reserve for the purpose of outdoor dining. One of the conditions (Condition 6) of the licence states that further approval is required prior to the installation of any permanent structures or fixture.

The applicant noted that the structures were temporary, with the shade cloth being removed in winter. It was clarified that the pole structures holding the shade cloth up were permanent and required separate approval via a Section 138 application to Council. The Section 138 application would need to be accompanied by appropriate certification for all of the structures within the road reserve.

Trading hours

The applicant noted that the proposed extension of trading hours was going to be a trial, and was prepared to revert back to the approved trading hours if necessary.

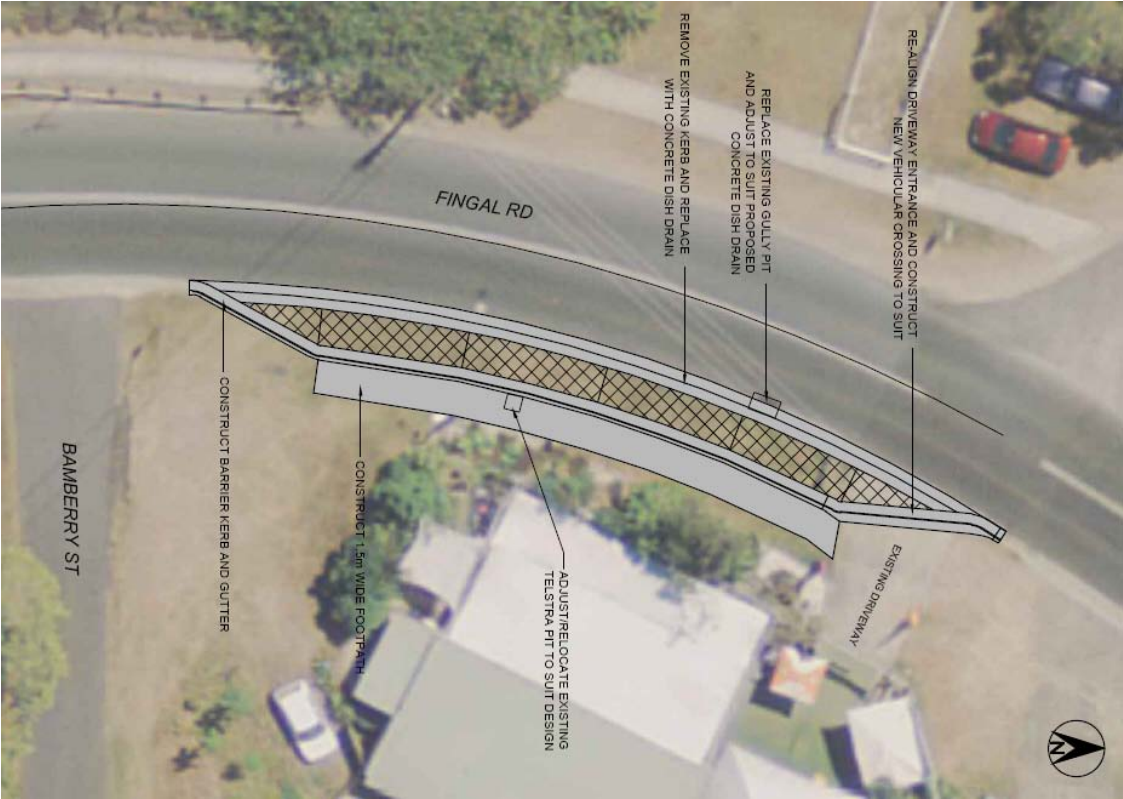
Live music

The applicant requested that the restaurant be able to continue with live music on Sundays, as there was a concern of having to have to cancel bands/musicians that have already been booked for the venue. It was pointed out that the consent clearly stated that live music was only allowed on Saturdays. Any variation to that would require an acoustic report, particularly given the site is within a 2(a) residential area.

**UPDATE OF ACTIONS SINCE WORKSHOP OF 31 JULY 2012:**

Further to the Councillors Workshop held on 31 July 2012, Council’s Engineering and Operations Division considered a series of options for providing car spaces for the current restaurant use on adjoining and adjacent public areas.

It was considered inappropriate to allocate these car spaces in the road reserve and car park area on the opposite side of Fingal Road. Alternatively, it was the officers’ preference that the spaces be provided in the road reserve adjoining the frontage of the subject site along Fingal Road, as shown in Figure 2 below.



**Figure 2: Possible location for customer parking**

In terms of a way forward, it was considered appropriate to forward the abovementioned proposal to determine whether the applicant would be willing to consider a possible condition of an amended development consent, requiring the lodgement of a separate Section 138 road reserve application, and that the applicant commit to the payment of the



construction of these spaces and associated road works. This process avoids the need to prepare an amendment to Council's Section 94 Plan, or a Voluntary Planning Agreement.

Council officers prepared a very preliminary cost estimate of just under \$60,000 for the construction of the four spaces, although this does include a more conservative estimate for the re-location of an existing Telstra pit, which may work out to be a lesser amount, depending on the complexity of the works.

The officers then forwarded a copy of the draft parking concept and preliminary cost estimate to the applicant.

The following response was received from the applicant:

*"Thank you for your recent email. I greatly appreciate the efforts which you and your colleagues have made to address the parking issues at the Shack and thereby enable me to maintain my business (and I suggest an important community facility). As I have previously expressed to Council I am most certainly not trying to avoid my responsibilities in respect of any parking requirements at the Shack, and therefore am willing to consider any fair and reasonable option to achieve this.*

*I must admit that the parking area you have proposed has never been discussed as an option, and if I am to carefully consider the implications before reaching a decision I need additional information from you.*

*Your email states that the concept offered is a "viable solution", although no explanation is provided as to the basis for that conclusion. In order for me to respond I would appreciate the basis on which it is considered that this option is to be preferred.*

*My initial thoughts are that this option raises safety, amenity and financial concerns. These are as follows:*

- 1. The parking area is on the in-side of a bend with double white lines in the centre of the road. In order for patrons to access the parking areas they will have to execute a turn somewhere along Fingal Road (eg at the boat ramp car park or at the junction with ??). This is not convenient and therefore there will be the temptation to cross the double lines illegally, thereby creating a traffic hazard.*
- 2. The proposed plans include a short length of footpath (which also requires the re-location of a telecom pit), when there is no footpath either side. There seems little point in this.*
- 3. Out-door dining in accordance with Council policy does not require the provision of any on-site parking. That policy is based on the principle that patrons will utilise existing public parking in the neighbourhood, as happens in Kingscliff and Murwillumbah. In the case of the Shack it is fair to assume from the comments made in the DAP notes that in granting the out-door dining licence that patrons would use existing parking facilities at the boat ramp. The distance and need to cross the road is no different to the situation at Kingscliff and Murwillumbah. Therefore, on what basis is the provision of any shortfall in on-site parking in that same parking area or in the vacant road reserve opposite the Shack unacceptable?*
- 4. The proposed parking on the front of the premises would block the riverside view which is the reason the business was created.*
- 5. There seems to be no reason to build another formalized parking area in an area that is already well supplied with parking. During our peak times (on Saturday evenings ) the existing parking areas are rarely used by boaties or fishermen.*
- 6. The area across the road has never been used for anything other than parking.*

*Once again thank for your commitment to securing a positive outcome to the parking at the Shack.”*

It is evident from the applicant's response that an acceptable alternative to the current car parking issue affecting the operation of the current restaurant use has yet to be resolved. Given the need to address a number of more immediate compliance issues, further direction from Council is sought on a preferred way forward.

**OPTIONS:**

1. That Council support the officer's recommendation for refusal from 17 July 2012 meeting; or
2. That Council supports deferral of the matter, to provide the applicant with the opportunity to submit further details in response to Council's current compliance concerns, and that the officers submit a further report to Council's October meeting.

**CONCLUSION:**

As highlighted in the officers' report to 17 July 2012 Council Meeting, whilst the substantial community public support for the continuing restaurant operations is acknowledged, there are a number of unresolved compliance issues such as the provision of appropriate parking facilities, hours of operation and unauthorised structures which necessitate a preferred course of action from Council.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy - Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

The applicant has the option to appeal the matter in the Land and Environment Court should they be dissatisfied with Council's resolution.

**d. Communication/Engagement:**

Not Applicable.

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

1. Copy of the original report to the 17 July 2012 Council meeting (ECM 54633428)
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