

DEVELOPMENT APPLICATION

PART B - APPLICATION AND SITE DETAILS

Use this form to apply for consent to carry out development. The DA Guidelines that accompany this form will help you complete the application. To complete this form, please tick the boxes and fill out the sections as appropriate. To minimise delay in receiving a decision about your application, please ensure you submit all relevant information. Once Council has assessed your application, you will receive a notice of determination.

Office Use Only -	
Application No.	Fees
DA <input type="checkbox"/> 01, 2915	Development App. \$ 270.00
CC <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Notification \$ 134.00
Inspection District	Construction Cert. \$
Zoning	Occupation Cert. \$
Related Files	Long Service Levy \$
Date Received	Other (.....) \$
Receipt No.	Other (.....) \$
	Other (.....) \$
	Total \$ 354.00

5 APPLICANT'S NAME ONLY

Full Name The Atmos Home Model 74
TERESA ROGG - JAVASCAR

6 PROPERTY DETAILS

Flat/street no. 51
 Street River Road
 Town or Locality Shoalhaven Heads
 Lot or Portion Nos. 11 Section (where relevant)
 DP or Parish Name 532057
 Area of Land (in m² or hectares) Approx 5000m²

You can find the lot no., section and DP no. on a map of the land; on the title documents for the land; or on your rates notice.

7 DESCRIBE YOUR PROPOSAL

TRUNK FAIR - GROWERS
AND SUPPLIERS MARKET FOR
SUPPLIERS TO THE
SHOALHAVEN HEADS HOTEL.

ONLY LOCAL SUPPLIERS
ARE USED

STREETS WILL BE USED IN
THE GREENFIELD RETAIL
PRECINCT AREA. ON
THURSDAYS AND FRIDAYS
BETWEEN 7.00AM AND NOON.
ONLY 8/15 STALL HOLDERS WILL
 (Note: Include the use of any buildings) BE AVAILABLE

8 PROPOSAL DETAILS cont/....

Will this involve:

erecting, altering or adding to a building structure

Is it a temporary building or structure? Yes No

subdividing land TABLES RIVERCREEK ONLY

subdividing a building into strata units

demolition

changing the use of land or a building or the classification of a building under the Building Code of Australia (without building, subdividing or demolishing)?

Other work (without building, subdividing or demolishing)?

Note: If you do not apply for demolition on this application, and you need to demolish structures on the site, a separate Development Application will need to be submitted to, and approved by Council, prior to the removal of any structures from the property.

Total project value EXISTING FIXTURES USED
 (including cost of landscaping, car parking etc. but excluding value of land). EXISTING SPACE

Number of car parking spaces proposed 80+

Hours of operation 7.00AM - NOON

9 ENVIRONMENTAL EFFECTS OF YOUR DEVELOPMENT

To assess your proposal, the Council needs to understand the impacts it will have. Depending upon the nature and scale of your proposal, you need to provide one or more of the statements listed below to explain the environmental effects of your proposal.

See Section 7.9 of the DA Guidelines.

Is your proposal designated development?

Yes > Please attach an environmental impact statement.

No > Please attach a statement of environmental effects.

Note: To assist in the preparation of a statement of environmental effects, Council has produced a "proforma" statement which may be completed and submitted with your application. The form is a guide only and information should be augmented where appropriate.

Is your proposal likely to significantly impact on threatened species, populations, ecological communities or their habitats?

Yes > Please attach a species impact statement. No

10 SUPPORTING INFORMATION

You need a BASIX Certificate in Shoalhaven when BASIX applies to the type of development for which you require approval. Commencement dates and details of types of development are at www.basix.nsw.gov.au. BASIX Cert. No. N/A

You can support your application with additional material, such as reports, photographs and models to illustrate your proposal. Please list what you have attached.

11 STAGED DEVELOPMENT

You can apply for development consent for only part of your proposal now, and for the remaining part(s) at a later stage.

Are you applying for development consent in stages?

Yes No N/A

If Yes, please attach:

- information which describes the stages of your development
- a copy of any consents you already have for part of your development.

12 CONCURRENCES FROM STATE AGENCIES

Do you need the concurrence of a State Agency to carry out the development? See Section 7.12 of the DA Guidelines.

No
 Yes – Please list any agencies whose concurrence you need.

13 APPROVALS FROM STATE AGENCIES

If you need a development consent and one or more of the approvals listed in the DA Guidelines, your development is known as integrated development. The relevant state agency will be involved in the assessment of your proposal. See Section 7.13 and Attachment C of the DA Guidelines.

Is your application for integrated development?

No
 Yes – Please list the approvals you require

and attach:

- a cheque for \$250.00 made out to each agency that will look at your proposal.
- sufficient information for the approval body(s) to assess your application.
- additional copies of your application for each agency. The Council can tell you the number that will be needed.

14 WORK IN THE ROAD RESERVE

If you are also seeking approval for an activity within the road or footpath area under Section 138 of the Roads Act, tick the type of approval(s) required. You will need to provide full details with the application. See Section 7.14 of the DA Guidelines.

Connection of stormwater to kerb or Council system
 Gutter layback Footpath crossing
 Footpath Other – specify N/A

15 OTHER COUNCIL APPROVALS

To carry out your proposal you may need approval for an activity under Section 68 of the Local Government Act. Please attach sufficient information for Council to assess your application. Tick the type of approval(s) required. See Section 7.15 and Attachment D of the DA Guidelines.

On-site water supply work
 Wastewater drainage
 Stormwater drainage work
 Domestic oil or solid fuel heating appliance
 Other – specify: N/A

16 WASTE MANAGEMENT

Is the application for a single dwelling, renovation of, or minor addition to a dwelling house?

Yes → No N/A
Please complete waste plan on page 6. Please see Waste Minimisation and Management Guidelines for further information on the preparation and submission of a Waste Minimisation and Management Plan.

17 PLANS OF THE LAND & DEVELOPMENT

You need to provide a number of plans that show what you intend to do. Hardcopy should be A3 or A4 size and the floor plan shown on a separate page. Electronic document submission on CD is encouraged.

Please attach:

- a site plan of the land, drawn to scale (4 copies).
- plans and elevations of the proposal, drawn to scale (4 copies). Floor plans to be on a separate sheet, and where relevant:
- an A4 size plan of the proposed building and other structures on the site
- a plan of the existing building, drawn to scale.
- a waste minimisation and management plan.
- a BASIX certificate (if required).

PART B – DEVELOPMENT DETAILS

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BUILDER'S DETAILS

Builder's Name(s)
(If 'owner' write 'owner/builder' or if unknown write 'N.Y.K.')

Licence No.

Postal Address

Town Postcode

Telephone No. Bus.

Mobile

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CONSTRUCTION STATISTICS

This information is required by the Australian Bureau of Statistics (ABS) and must be completed if building work is involved.

The ABS requires that the description which best describes the materials to be used for wall, floor, roof and frame construction be nominated from the schedule below.

Walls	Frame	Roof
Brick Veneer	Timber	Aluminium
Full Brick	Steel	Concrete
Single Brick	Other	Concrete Tile
Concrete Block	Unknown	Fibrous Cement
Concrete Masonry		Fibreglass
Concrete		Masonry/Terracotta Shingle
Steel	Floor	Tiles
Fibrous Cement	Concrete	Slate
Hardiplank	Timber	Steel
Timber/Weatherboard	Other	Terracotta tile
Cladding-Aluminium	Unknown	Other
Curtain Glass		Unknown
Other		
Unknown		

Tick whether:

New Alterations Additions

Building Construction Cost

(Include labour but exclude cost of landscaping and car parking etc.)

Existing Development

Type of Construction *(select type from schedule above)*

Wall

Frame

Floor

Roof

Colour of Walls *(specify)*

Colour of Roof *(specify)*

Floor area *(for dwellings - exclude garage)* m²

Number of Storeys

For Residential Units, (including dual occupancies) state number of new/additional units

and tick whether – Attached Detached

If Structure is a dwelling, state whether: separate house, kit house or transportable dwelling (excluding caravan or mobile home)

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OTHER CERTIFICATES

(a) Does the application include an application for a construction certificate?

Yes

No

(b) Do you wish to appoint Council as the Principal Certifying Authority (PCA) for the purpose of undertaking required inspections and issuing Compliance and Occupation Certificate(s)?

Yes

No

Note 1: If you ticked "Yes" to question 20(b), this application will be deemed to be an application for a Final Occupation Certificate. The date of application will be taken to be the date that a final inspection is requested. If an Interim Occupation Certificate is required, a separate application must be lodged at that time.

Note 2: If you ticked "No" to questions 20(a) and/or 20(b) you are advised that building works cannot be commenced until a construction certificate is obtained for building work and a PCA is appointed.

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PROPOSED USE OF BUILDING IF CHANGING USE

What will be the principal use of the building if this application is approved?

- Single dwelling
- Dual occupancy
- Residential flats, serviced apartments, attached dwellings
- Hotel, motel, boarding house, hostel *MAINTAIN*
- Offices (commercial)
- Retail
- Factory, service station
- Warehouse, showroom
- Public buildings, halls, educational, laboratories
- Outbuildings, garages, pergolas, pools, signs
- Other (please describe).....

PART B – CHECKLIST & DECLARATION

All the details sought in the accompanying checklist must be provided. If you are planning a major development or developing land that may be environmentally sensitive you will also need to seek advice from Council's staff as additional information may be required. On-site inspections are carried out prior to the assessment of any application. As a result of this inspection further information may sometimes be required. A Council Officer will contact you soon after their initial inspection if this is the case.

A COMPLETE CHECKLIST MUST BE SUBMITTED WITH THIS APPLICATION. FAILURE TO PROVIDE ALL REQUIRED DOCUMENTATION OF AN ACCEPTABLE STANDARD WILL RESULT IN YOUR APPLICATION BEING REJECTED FOLLOWING AN INITIAL REVIEW BY DA ASSESSMENT STAFF.

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DECLARATION

I apply for approval to carry out the development or works described in this application. I declare that all the information in the application and checklist is, to the best of my knowledge, true and correct.

I also understand Pursuant to clause 51 of the EP and A Regulations 2000 that if the information is incomplete the application may be delayed or rejected or more information may be requested. I acknowledge that if the information provided is misleading any approval granted 'may be void'.

I accept that Council cannot be held liable for delays in processing arising out of inadequacies in the material submitted in support of this application.

Where dedicated A4 plans (detailing internal details) are not provided, I agree to the use of A4 plans provided in support of this application for advertising purposes.

Applicant Signature

P. Walker

Date

16 October 2006



ABN: 87 115 066 736

51 River Road
Shoalhaven Heads
Po Box 176
Berry NSW 2535
Phone No: 4448 7125
Fax No: 4448 7585

RE: DEVELOPMENT APPLICATION – HEADS HOTEL MOTEL P/L TRADE FAIR – GROWERS & SEAFOOD MARKET

Further to our recent DA we now provide the following supporting information:

- There are no other markets in Shoalhaven Heads except a community run market twice a year which features mainly second hand goods and bric-a-brac.
- The Heads Hotel Markets is incorporating current suppliers who were members of the Brand Shoalhaven initiative and part of the markets formally held at the Marriott Field in Nowra. Jenny Crosby, the former President/Secretary of Brand Shoalhaven is now the co-ordinator for the proposed Heads Hotel Markets.
- We only aim to have 8-15 stallholders each week, including suppliers of local produce, oil & seafood. The seafood supplier will have direct access to the market's customers, and is a fully licensed refrigerated van designed for retail sales.
- The Heads Hotel will be supplying breakfast on Saturday mornings on Markets Day from 7am through to 12pm.
- The Markets stalls will be located at the front of the Heads Hotel, using sturdy collapsible tables approximately 8ft x 4ft in dimension. Stall holders and customers will have easy access to these stalls via the two side driveways, and parking will take place in the hotel's existing 80 space car park.
- Adequate trolleys will be provided for any bulky items, but we believe that most stall holders will not be transporting large items, for instance, nothing bigger than normal sized fruit boxes.
- Relevant directional signage will be displayed correctly from Friday through to Saturday afternoon only, then removed.
- The Heads Hotel will monitor and keep the site clean and tidy at all times. The Hotel has large garbage containers and 4 recycle bins for bottles / cardboard & paper etc.
- There is currently only one convenience store in Shoalhaven Heads which mainly supplies frozen goods and groceries – standby / emergency items, but no large quantities of fresh fruit and vegetables. However we are prepared to offer the owner a free stall each week at our Markets.

A Great Family Pub By The Sea
~ Proud to be Part of the Community ~



ABN: 87 115 066 736

51 River Road
Shoalhaven Heads
Po Box 176
Berry NSW 2535
Phone No: 4448 7125
Fax No: 4448 7585

- The Heads Hotel is currently licensed for retail activities.
- In relation to traffic created, we anticipate the volume of patrons/ traffic will not exceed that of our normal peak trading times, such as Friday evenings and Saturday afternoons.
- Our chef at the Heads Hotel will be using this fresh produce in our menu, providing meals on Market Day and the restaurant area will be used as part of the trade area.

In conclusion, we believe that this proposed Trade Fair will be a positive event for all concerned, with no detrimental impact on the Shoalhaven Community. The primary aim of the proposed Markets is to promote local growers, increase tourism and to support local businesses.

If you require any further information in relation to the proposed Heads Hotel Trade Fair please do not hesitate to contact me.

Yours sincerely,

COLIN WALLER
HEADS HOTEL MOTEL

18/10/2006

**NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION
DEVELOPMENT CONSENT**

**Environmental Planning and Assessment Act, 1979
DA06/2915**

TO:

Tamara Kegg
c/o The Heads Hotel/Motel P/L
51 River Road
SHOALHAVEN HEADS 2535

being the applicant(s) for DA06/2915 relating to:

51 River Rd, SHOALHAVEN HEADS - Lot 11 - DP 532057

APPROVED USE AND OR DEVELOPMENT: Alteration of the Shoalhaven Heads Hotel's Existing Use Rights to include the Operation of a Weekly Local Fresh Produce Fair to be conducted at the Front of the Hotel Building (forecourt) for between 8 and 15 Stall Holders on Saturdays from 7.30am to 12.30pm

BCA CLASSIFICATION(s):

10b

DETERMINATION DATE:

18th December 2006

Pursuant to the Section 81 of the Act, notice is hereby given that the above application has been determined by granting consent, subject to the conditions listed below.

CONSENT TO OPERATE FROM:

18th December 2006

DETAILS OF CONDITIONS

The conditions of consent and reasons for such conditions are set out as follows:

PART A

CONDITIONS OF A GENERAL NATURE, INCLUDING A DESCRIPTION OF THE PROPOSED DEVELOPMENT

General

1. This consent relates to Alteration of the Shoalhaven Heads Hotel's Existing Use Rights to include the Operation of a Weekly Local Fresh Produce Fair to be conducted at the Front of the Hotel Building (forecourt) for between 8 and 15 Stall Holders on Saturdays from 7.30am to 12.30pm as illustrated on the plans, specifications and supporting documentation stamped with reference to this consent, as modified by the following conditions. The development shall be carried out in accordance with this consent.

Notes:

- *Any alteration to the plans and/or documentation shall be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under s96 of the Act, or a fresh development application. No works, other than those approved under this consent, shall be carried out without the prior approval of Council.*
 - *Where there is an inconsistency between the documents lodged with this application and the following conditions, the conditions shall prevail to the extent of that inconsistency*
2. The **Event** shall not commence until all relevant conditions of development consent have been met or unless other satisfactory arrangements have been made with council (i.e. a security).

Limited Consent

3. This consent is valid for 1 year and will cease to operate on the **18th December 2007**.

Notes

- a) Application may be made to extend the consent under Section 96(1A) of the Environmental Planning & Assessment Act, 1979.
- b) If the applicant under S96 is not the original applicant, the written consent of the owner of the land must first be obtained.
- c) An application to extend the consent should be made at least 28 days **before** the consent will cease to operate.
- d) In deciding whether to extend the consent, Council will take into account any relevant policy amendments made since the consent was issued.

PART B

CONDITIONS THAT MUST BE COMPLIED WITH BEFORE THE USE CAN COMMENCE

Nominated Charitable Organisation

4. A charitable organisation will be nominated by the Heads Hotel or Event Coordinator and notified to Council in writing **prior to the commencement of the event**. The charitable organisation will receive all funds collected by the Heads Hotel for the provision of the temporary stalls to the stallholders within the Heads Hotel grounds.

Public Liability Insurance

5. The applicant shall secure public liability insurance with an approved insurance company. Such policy should not be less than \$10 million dollars and must indemnify and keep indemnified all interested parties from and against any actions, suits, claims and demands of whatever nature and all costs charged and expenses in respect of any accident or injury to any person or property which may arise out of the activities approved under this consent. Evidence that such insurance has been affected must be submitted to Council **prior to commencement of the event**.

Damage to Public Assets

6. Prior to the event, the event co-ordinator must contact Council's Development Engineer for an inspection of the adjacent kerbs, gutters, footpaths, walkways, carriageway, reserves and the like. Any damage incurred as a result of the event must be repaired at the applicant's expense.

Waste Collection and Disposal

7. The applicant must ensure that sufficient waste containers are provided for the duration of the event. At the conclusion of the event all waste, and containers, must be removed from the site. The use of recycling facilities is encouraged.
8. Suitable garbage receptacles shall be provided near the stalls for the public to use and the site must be left clean and tidy and returned to its original condition.

Notification

9. NSW Police, RTA, Emergency Service Providers, relevant bus and taxi companies must be notified a minimum of six (6) weeks prior to the event. All conditions imposed by any statutory authority must be complied with.

Emergency Access

10. Emergency vehicular access must be available to, and within, the site at all times. All access aisles must be kept free of physical obstructions to maintain free and easy access for emergency vehicles to the display and demonstrations areas.

Advance Warning Signs

11. **Immediately prior to the event**, temporary, advance-warning signs must be placed in the eastern and western approaches of River and Ravenscliffe Road to direct vehicles to turn into the entrance points of the site. Signs must:
 - a) Have minimum dimensions of 1500m x 750mm;
 - b) Be placed not less than 200 metres from the River and Ravenscliffe Road intersection; and
 - c) Be placed at 50 metre intervals.
 - d) Be erected in accordance with Section 3.6 “Control of Advertising Signs” of the Roads & Traffic Authority’s Guide to Signs and Markings.
 - e) Be removed within 24 hours of the conclusion of the event.

Corflute signs will be satisfactory for this purpose.

Mobile Food Stalls

12. All temporary foodstalls/mobile food vehicles shall comply with The Food Act 2003 and Regulations, Councils “*Mobile Foodstalls/Vehicles and Temporary Food Premises Code*” and NSW Food Authority “*Food Handling Guidelines for Temporary Events*”. Prior to operation all temporary food stalls must obtain written approval from Council’s Development and Environmental Service Group.
13. Stall holders are required to notify the food business details to the NSW Food Authority. This can be done on the Food Authority’s website([www. foodauthority.nsw.gov.au](http://www.foodauthority.nsw.gov.au))
14. A one day food stall shall consist of a stall of which the roof and three sides are covered with plastic sheeting, vinyl or other approved material. Where the food stall is erected on unsealed ground a suitable impervious material shall be laid over the ground area of the stall.
15. Disposal eating and drinking utensils only shall be used
16. All food stored inside the stall shall be stored 750mm above the ground and covered or in closed containers.
17. Single use towels, liquid soap and detergent shall be provided in each food stall where washing facilities are required by this standard.
18. All takeaway foods prepared from the stall shall be for immediate sale and consumption unless a suitable food warmer or food display, maintaining the food a temperature of at least 60C(hot foods), or below 5C(cold foods), is provided.

See Advisory Notes: ***Mobile Food Stalls***

Carparking

19. Parking is to be provided on site in the existing car parking area.
20. Disabled car parking spaces must be provided within close proximity to the market area
21. The car parking area is to be maintained to ensure that it is free from dust and potholes to ensure the safety of the market attendees is not compromised

PART C

CONDITIONS RELATING TO THE APPROVED WORK AND SITE MANAGEMENT

Amenities

22. On site amenities must be available to the public for the duration of the event. These facilities must be made available to exhibitors, workers, officials and the general public and must be maintained in a clean and tidy manner for the duration of the event.

Hours of Operation

23. Hours of operation for the event shall be confined to the hours of 7.30am and 12.30pm Saturday. Set up may commence at 6.30am on Saturday and the site must be cleared by 2pm on Saturday.

Electrical Installations

24. All temporary electrical installations are the responsibility of the applicant and must comply with the relevant Australian Standards.

Traffic and Parking Marshals

25. Parking marshals shall direct vehicles to appropriate parking areas and ensure safe on-site vehicular and pedestrian movement. Marshals must wear safety vests at all times and be positioned at the entry to the site and throughout the parking area. Any Marshal directing traffic within the River and Ravenscliffe Road Reserve must be accredited. For further information regarding accreditation contact Council's Development Engineer on 4429 3249.

Security

26. The event co-ordinator shall be responsible for managing the activities and for maintaining good order and conduct on and around the site.

Market Stalls

27. The number of stalls associated with the Event shall not exceed 15 in number. The applicant shall ensure that the articles sold and displayed have been legally obtained and are not unsightly or offensive to public morality. The applicant shall retain a register of all stall holders, including names and addresses, for a minimum period of 12 months. The market stalls shall comprise of food produce and food related items only.

Advertising Signs

28. Two (2) temporary advertising signs may be erected within the boundaries of the property to promote the event. The signs may be erected Three (3) days prior to the market and must be removed within one (1) day of completion of the market. Temporary advertising signs on Council property require the separate written approval of Council.

Amusement Devices

29. Any amusement device required to be registered under the Construction Safety Regulations 1950, must not be installed or operated on the property unless an approval under Section 68 (Part F) of the Local Government Act, 1993 has been obtained from Council. Any such device must, when installed or operated, meet all the requirements of the relevant clauses of the Local Government (Approvals) Regulations, 1999.

PART D

CONDITIONS THAT RELATE TO ONGOING MANAGEMENT OF THE PROPOSED DEVELOPMENT

Noise

30. Noise levels from the premises (measured using the L₁₀ noise level descriptor) must not exceed the background noise level in any octave band (measured using the L₉₀ noise level descriptor) by more than 5 dB(A) when measured at the boundary of the closest residential premises.
31. No amplified music or public address system is to be used, performed or played from the markets

PART E

CONDITIONS THAT MUST BE COMPLIED WITH UPON COMPLETION OF THE EVENT

Site Rehabilitation

32. The site must be left clean and tidy and returned to its original condition on completion of the event.

PART F

REASONS FOR CONDITIONS

Conditions of consent have been imposed to:

1. Ensure the proposed development:
 - a) achieves the objects of the Environmental Planning and Assessment Act, 1979;
 - b) complies with the provisions of all relevant environmental planning instruments;
 - c) is consistent with the aims and objectives of Council's Development Control Plans, Codes and Policies.
2. Ensure that the relevant public authorities and the water supply authority have been consulted and their requirements met or arrangements made for the provision of services to the satisfaction of those authorities.
3. Meet the increased demand for public amenities and services attributable to the development in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979.
4. Ensure the protection of the amenity and character of land adjoining and in the locality of the proposed development.
5. Minimise any potential adverse environmental, social or economic impacts of the proposed development.
6. Ensure that all traffic, carparking and access requirements arising from the development are addressed.
7. Ensure the development does not conflict with the public interest.

PART G

ADVICE ABOUT RIGHTS OF REVIEW AND APPEAL

Development Consent under Environmental Planning and Assessment Act, 1979

*Under section 82A of the Environmental Planning and Assessment Act, 1979 an applicant may request the council to review its determination except where it relates to a complying development certificate, designated development or integrated development. The request must be made **within twelve (12) months** of the date of the receipt of the determination, with a prescribed fee of 50% of the original DA fee.*

Section 97 of the Environmental Planning and Assessment Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised **within twelve (12) months** after receipt of this notice.

PART H

ADVICE ABOUT WHEN THIS CONSENT LAPSES

This consent is valid for one year from the date hereon.

In accordance with Section 95 of the Act, development consent of the erection of a building does not lapse if building, engineering or construction work relating to the building or work is physically commenced on the land to which the consent applies before the lapse date.

PART I

GENERAL ADVICE TO APPLICANT

Disability Discrimination Act 1992

This application has been assessed in accordance with the Environmental Planning & Assessment Act, 1979. No guarantee is given that the proposal complies with the Disability Discrimination Act 1992.

The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

The Disability Discrimination Act covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS1428.1 - "Design for Access and Mobility". AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under the Disability Discrimination Act currently available in Australia.

Disclaimer – s88B restrictions on the use of land

The applicant should note that there could be covenants in favour of persons other than Council restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

Under clause 37 of Shoalhaven Local Environmental Plan 1985 agreements, covenants or instruments that restrict the carrying out of the proposed development do not apply to the extent necessary to enable the carrying out of that development, other than where the interests of a public authority is involved.

Mobile Food Premises

An application for approval for a mobile food stall/temporary food premises can be obtained from Council. Application fees for 2003/2004 are as follows:

- 13102 Shows and markets – up to 15 food stalls - \$100.00 per annum
- 13103 Shows and markets – over 15 food stalls - \$200.00 per annum
- 10913 Commercial – per site per 3 days - \$26.00
- 10914 Commercial – per site per 12 months - \$47.00
- 10915 Charities – Nil

NSW Native Vegetation Act 2003

The Native Vegetation Act 2003 requires consent for the clearing of remnant native vegetation or protected regrowth from the Southern Rivers Catchment Management Authority. In the Shoalhaven City Council area, this requirement generally applies to land that is zone Rural (Zone 1), Special Use (Zone 5), Open Space (Zone 6), Environment Protection (Zone 7) and Natural Hazards (Zone 9). If your development consent relates to land in such a zone then you may need to get a further separate approval from the Southern Rivers Catchment Management Authority for the clearing of remnant native vegetation or “protected” regrowth.

This development application has been assessed in accordance with the New South Wales Environmental Planning & Assessment Act, 1979. The determination of this development application has **not** involved any assessment of the proposed development in regard to the NSW Native Vegetation Act 2003.

It is the proponent’s responsibility to consult the Southern Rivers Catchment Management Authority to determine the need or otherwise for their approval and you should not construe the granting of this development consent as notification to you that the NSW Native Vegetation Act does not apply. The NSW Native Vegetation Act 2003 may have direct application to your proposal and you should obtain advice about this matter directly from the Southern Rivers Catchment Management Authority. You can contact them on 4429 4446 or by email southern@cma.nsw.gov.au.

There are severe penalties for non-compliance with the Native Vegetation Act 2003.
SIGNED on behalf of Shoalhaven City Council:

Signature

**Name Jessica Rippon
 Senior Development Planner
 Development & Environmental Services Group**



Shoalhaven City Council
Received

23rd October 2008

29 OCT 2008

Mr R. Russell
Development Manager
Shoalhaven City Council
Reference Number (DA06/2915 – D08/164486)

File No. DA06/2915
Referred to: RSK

Dear Mr R. Russell,

We refer to your recent correspondence; and make the following representations in accordance with section 1211.

1. We have conducted our Saturday morning activities as a Trade Supplies Exhibition of not only Shoalhaven Local Produce but as a demonstration of products available from our Bistro and Restaurant.
2. All products sold on a Saturday morning are used by our kitchen staff and included on our Bistro and Restaurant menu's.
3. Consequently we maintain our activities come within our existing usage of retail, and should not be governed by the development consent issued by Council on the 21st December 2007.
4. We believe this DA was not necessary, as the activities conform with normal retail operations.
5. We understand that all produce markets and fairs require development consents when they are held on council properties or non commercial properties whose normal activities are not retail.
6. We note that our Saturday activities have increased the tourist traffic in our area, not only for ourselves but for all retail outlets in the Shoalhaven Heads area.
7. Our survey shows 60% plus of customers are visitors staying at our own establishment or passing through.

**overlooking the shoalhaven river & seven mile beach
great food - cold beer - accommodation - magic views by the sea**

We will be able to make further representations however we believe the above when noted by council will lead to the withdrawal of any orders for closure on the basis they are on the wrong "premise" or assumptions and certainly not in the interest of the community.

Regards,

A handwritten signature in black ink, appearing to read 'Ian Muddle', with a horizontal line above it.

Ian Muddle
Licensee/ Proprietor, The Heads Hotel

**overlooking the shoalhaven river & seven mile beach
great food - cold beer - accommodation - magic views by the sea**

51 River Road, Shoalhaven Heads NSW 2535
Tel: (02) 4448 7125 Email: info@headshotel.com.au
www.headshotel.com.au



APPLICATION TO MODIFY A DEVELOPMENT CONSENT

Shoalhaven City Council

Development and Environmental Services Group • www.shoalhaven.nsw.gov.au

Administration Centre, Bridge Road, Nowra

• Telephone (02) 4429 3111

• Fax (02) 4429 3178

• Post: PO Box 48, Nowra 2541

Southern District Office, Deering Street, Ulladulla

• Telephone (02) 4429 0000

• Fax (02) 4429 0000

• Post: PO Box 797, Ulladulla 2530

Use this form to apply for modification to development consent. To complete this form, please tick the boxes and fill each section as appropriate. To minimise delay in receiving a decision about your application, please ensure you submit all relevant information. Once Council has assessed your application, you will receive a notice of determination.

Office Use Only - Application Fee		Amount	55-
DA 08, 1561	DA 06, 2915	Modification	142-
Related Files		Other (.....)	
Date Received 19/12/08		Other (.....)	
Receipt No. 20-115492		Total	197.00

1 APPLICANT'S NAME ONLY

Full Name THE HEADS HOTEL
THE HEADS HOTEL

2 PROPERTY DETAILS

Flat/Street no. 51

Street RIVER RD

Town or Locality SHOALHAVEN HEADS

Lot or Portion No. 11 Section (where relevant) _____

DP or Parish Name 532057

Area of LAND (in m² or hectares) _____

You can find the lot no., section and DP no. on a map of the land; on the title documents for the land; or on your rates notice.

3 APPROVED DEVELOPMENT

Pursuant to Section 98 of the EPA Act 1979 application is hereby made to modify the following Development Consent.

Development Consent No. DA 06/2915

Date Approved 19/12/2006

Description WEEKLY PRODUCE FAIR

A copy of the relevant BASIX Certificate is attached N/A
(Effective 1st July, 2005)

4 TYPE OF MODIFICATION

This application is made to Council or (in the case of a development consent issued by the Court) to the Land and Environment Court

This application is made under Section 98 of the Environmental Planning and Assessment Act, 1979 as follows:

Minor (S98(1))

Minimal Environmental Impact (S98(1A))

Other (S98(2))

Minor (1) - Indicate minor error, misdescription or miscalculation.

Minimal Environmental Impact (1) - Give details of the proposed modification and the expected impacts:

Other (1) - Give details of the proposed modification, the expected impacts and the reasons for seeking these modifications. Provide evidence that the development (as to be modified) will remain substantially the same as the approved development. (Please refer to relevant conditions of development consent where appropriate).

EXTEND DEVELOPMENT CONSENT FOR 12 MONTHS AND WEEKLY FREQUENCY

(1) - If there is insufficient room on this form to describe the proposed modification, please support your application with additional information.

5 DISCLOSURE OF POLITICAL DONATIONS & GIFTS (S147 OF THE EPA ACT 1979)

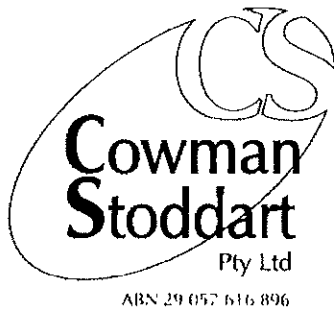
Have you or any associated persons with a financial interest in this application in the last two (2) years, made any political donations or given any gifts to any local Councillor or Council employee?

Yes No

If you ticked yes, please fill out a Political Donations & Gifts Disclosure Statement at the back of this form.

Important Notice: It is an offence under the EP & A Act 1979 if you fail to disclose reportable donations and gifts.

Note: When modification of the consent involves alterations to the approved plan(s), three (3) copies of the amended plans must be attached, together with the relevant fee, where appropriate.



STEPHEN RICHARDSON, M.Appl.Sc., BTP, Grad.Dip.Env. Mgt, CPP, MPIA
STUART DIXON, B. Urb. & Reg. Plan., CPP, MPIA

Associates:

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**PLANNING REPORT TO ACCOMPANY APPLICATION FOR
MODIFICATION OF CONSENT UNDER SECTION 96 SHOALHAVEN
HEADS HOTEL**

NO. 51 RIVER ROAD, SHOALHAVEN HEADS

1. INTRODUCTION

Approval issued under DA 06/2915 for the establishment of a weekly Fresh Produce Fair at the Shoalhaven Heads Hotel, sited at No 51 River Road, Shoalhaven Heads.

The application was issued subject to conditions, including Condition 3 which limited the consent for a one year period, to expire on 21st December 2007. Condition 3 was subsequently amended by a Section 96 application, which extended the consent such that the lapse date is now the 21st December 2008. At that time, Council took the opportunity to further restrict activities at the site by amending Condition 23 which originally imposed hours of operation, by also restricting the operation of the Fair to only Saturday each month.

This application seeks to amend the consent in the following manner:-

- Amend Condition 3 to extend the consent for a further 12 month period,
- Amend Condition 23 such that it restricts hours of operation in accordance with that originally imposed, and does not limit the operation of the Fair to one Saturday a month,

In undertaking an assessment and preparing this Planning Report, consultation was had with Council staff to ascertain relevant issues associated with the proposal.

This Planning Report will assess the relevant matters for consideration as listed under Section 79C of the Environmental Planning and Assessment Act, 1979 (EP&A) as required under Section 96.

2. BACKGROUND

The subject site contains the Shoalhaven Heads Hotel and Motel, which has been continuously operating for many years. The site is currently zoned Residential 2(a1) under the provisions of Shoalhaven LEP 1985. Hotels and motels are not a permissible land use within the Residential 2(a1) zone. As such, Council acknowledges the site benefits from the existing use provisions of the Environmental Planning and Assessment Act 1979.

Application was made in October 2006 for the operation of a Trade Fair-Growers and Seafood Market to operate in the forecourt area of the Hotel. The Fair was to comprise 8 to 15 local stallholders, trading in fresh produce, with the purpose being that fresh local produce could be provided to tourists and residents alike. The Fair also allows businesses that supply produce to the Heads Hotel a further opportunity to market their goods and produce.

This application was determined by Council on 18th December 2006 by the issue of a development consent for the following:-

Alteration of the Shoalhaven Heads Existing Use Rights to include the Operation of a Weekly Local Fresh Produce Fair to be conducted at the Front of the Hotel Building (forecourt) for between 8 and 15 Stall Holders on Saturdays from 7.30 am to 12.30 pm.

The Produce Fair has been in operation since this time however only 4 stall holders are regularly in attendance. The range of goods that are available include fresh fruit and vegetable, seafood, baked items, specialist bread, olives, and a range of gourmet deli items.

The Produce Fair has been relatively successful in providing a service to the residents and visitors of Shoalhaven Heads through the weekly supply of a range of fresh products and gourmet foods which, although available in the District, are not ordinarily available in local shops. Furthermore, the Produce Fair has been successful in generating visitation from outside of Shoalhaven Heads from nearby towns and villages.

3. PROPOSAL

This application seeks approval to the following:

- Amend Condition 3 as follows:-

This consent is valid for 1 year from the determination of this Section 96 application.

The effect of supporting this modification is that the activity can continue to operate for a further 12 month period.

- Modify Condition 23 as follows:-

The hours of operation for the Fair shall be confined to the hours of 7.30 am and 12.30 pm Saturday. Set up may commence at 6.30 am on Saturday and the site must be cleared up by 2.00 pm on Saturday.

The effect of supporting this modification is that the activity can operate on a weekly basis, each Saturday as proposed by the original application, and as originally approved by Council.

4. USE OF SECTION 96

Section 96 of the Environmental Planning and Assessment Act 1979 provides for the modification of a development consent. In utilising the provisions of Section 96, Council must be satisfied that the development involves minimal environmental impact, and that the development is substantially the same as originally approved.

In this instance, the application merely seeks to amend the conditions imposed by Council to allow for the continued operation of the Fair, and to revert back to the conditions of consent originally imposed by Council.

The proposal does not seek to alter the development in any other manner.

The development is clearly substantially the same as that already approved and it is considered that Council can utilise the provisions of Section 96 in this instance.

5. ASSESSMENT

The application seeks Council's consent to modify conditions imposed under DA06/2915 to enable the continued operation of the Fair in accordance with the original conditions.

Based on investigations with Council's staff, it would appear that concern stems from the potential economic impacts associated with the activity on established retail outlets within

Planning Report – Section 96 Modification
Shoalhaven Heads Hotel Motel
51 River Road, Shoalhaven Heads

Shoalhaven Heads. In this regard, it is understood that the activity does not result in any adverse impacts on the amenity of the locality surrounding the Hotel-Motel premises. This is considered reasonable given that the operation of a small scale Produce Fair as is approved is unlikely to result in substantive impacts beyond that experienced by the continued use of the Hotel-Motel at the site, and it would appear to be a good one for the activity approved.

In relation to the economic impacts of the activity, applications under Section 96 are to be assessed against relevant matters in Section 79C of the EP&A. Section 79C includes the following:-

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

It is understood from past Land and Environment Court decisions that the consideration of this matter requires an assessment of the broader economic impacts in the locality, rather than a limited assessment restricted to the impacts on other like businesses due to the potential competition resulting from a proposed development. Consideration of direct competition is not a proper planning purpose, and outside the scope of the range of matters Council is to consider under Section 79C of the EP&A. Competition is covered in other statutes including the Trade Practices Act and the Fair Trading Act.

However, it is understood from discussions with Council's staff that some consideration of existing shops would be appropriate to undertake some comparison between the range and scale of goods that are sold at the Fair, with those which are available generally within established retailers within Shoalhaven Heads.

As outlined above, the Produce Fair currently involves 4 regular stallholders, and according to our client, these offer the following goods:-

Stall	Goods Sold
Seafood Van	Whole fish, oysters, prawns
Olives	Gourmet olives and associated oils, small range of cakes
Bakery Items	Quiches, cakes, home made jams, free range eggs, small supply of Sourdough Bread from Berry Woodfire Bakery
Organic Farm Produce	Fresh fruit, vegetables and herbs grown locally at a farm in Terara

The existing Shoalhaven Heads shopping facilities are somewhat fragmented, located within three main shopping complexes. Although somewhat fragmented, the three areas are all sited within Shoalhaven Heads Road, which is the main road accessing the town and collecting local traffic. **Figure 1** is a map of the locality, identifying these three sites.

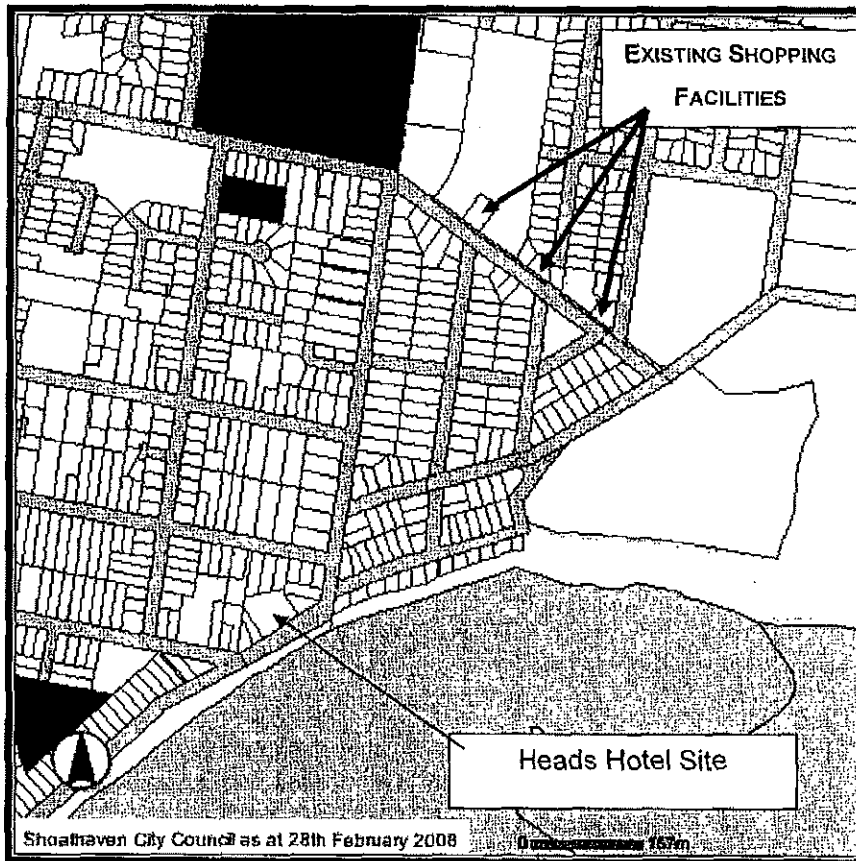


Figure 1 – Site Locality and Existing Retail Premises

The existing shopping facilities sited in the three areas are wide and varied, and include a Butcher, Bakery, Pharmacy, Licenced Bottle Shop, various Take-Aways, Post Office, Newsagency, Hardware, two General Stores, Hairdressers, Op-Shop and Vet Clinic.

In addition to the shopping complexes along Shoalhaven Heads Road Road, Shoalhaven Heads is also serviced by a Café in River Road, the Shoalhaven Heads Hotel Motel in River Road, and a Petrol Station with attached general store along Shoalhaven Heads Road at the entry to town. Of those existing business identified above, those which would sell items that may compete with the range of goods offered at the Produce Fair would include the following:-

Planning Report – Section 96 Modification
Shoalhaven Heads Hotel Motel
51 River Road, Shoalhaven Heads

- Bakery,
- Lettuce Inn General Store, and
- Shoalhaven Heads Friendly Grocer.

It is noted that there is currently no dedicated fresh seafood supplier within Shoalhaven Heads.

In relation to those shops selling competing goods, the following is noted:-

- The Shoalhaven Heads Bakery appears to sell a full variety of baked products, including cakes, pastries, bread and pies in addition to offering cold drinks and milk products.
- The Lettuce Inn is a General store which sells a variety of grocery and general store items, and includes fresh fruit and vegetables which are displayed on a single shelf along one wall of the premises, along with drinks and confectionery items. The fruit and vegetable display is likely to take up approximately 1/5th of the floor space of the premises.
- The Shoalhaven Heads Friendly Grocer sells a very wide selection of goods and includes a large selection of grocery items, frozen goods, drinks and confectionery, fresh fruit and vegetables and includes a take away section selling a wide selection of hot foods. The area available for display of fresh fruit and vegetables is restricted to a small area measuring approximately 1.5 m x 1 m and would take up approximately 1% of the total floor area.

From the above, the following is apparent:-

- residents of Shoalhaven Heads are provided with a wide range of goods and services from the retail and commercial premises that are available,
- the goods on offer at the Produce Fair do not compete in any way with the majority of retail outlets in Shoalhaven Heads,
- whilst some items available at the Produce Fair are also sold within existing retail outlets, these outlets offer a wide variety of goods, many of which are not sold at the Produce Fair, and as such, there is no direct competition,
- most stall holders at the Produce Fair do not directly compete with other retail outlets, in so far as other outlets sell a wide variety of produce and do not rely

solely on more specialist products as such as gourmet olives, woodfired bread, seafood items,

- the goods that are on offer are readily available at other premises within the District (eg Berry Woodfire Bakery, roadside stalls, other local markets) and the Produce Fair simply improves accessibility to these products for visitors to, and residents of, Shoalhaven Heads. To that end, the Produce Fair provides a service to the community as well as providing wider economic benefits to Shoalhaven Heads.

Having regard to direct impacts on competing businesses, it is worth noting that:-

- the Hotel site in River Road is some 700 metres travel distance from the closest established retail outlets in Shoalhaven Heads Road,
- the activity only operates one morning a week,
- goods that are available at the Produce Fair are available on the menu at the Heads Hotel, and
- the Produce Fair attracts only 4 regular stall holders and these offer a very limited range of goods.

In consideration of economic activity on a broader front, it is worthwhile considering that the Produce Fair is likely to result in the generation of additional persons to the village through its promotion of the Fair. In this regard, our client has advised that their surveys indicate that 60% of visitors to the Produce Fair are not resident of Shoalhaven Heads, instead coming from surrounding towns including Berry, Bomaderry, Gerringong and Kiama. Noting that the established retailers are sited on Shoalhaven Heads Road, a main entrance into town with reasonable exposure, tourist visitation may also result in other expenditure in town. Consequently, some positive economic benefits are likely to be derived from the proposal.

Furthermore, it is relevant to note that the operation of the markets contributes to the direct income of up to 10 persons on a trading day, (stall holders/market gardeners) all of which contributes positively to the local economy. Furthermore, the markets would indirectly contribute to the employment of many other persons involved in the supply of goods to stall holders.

The test in this instance, under Section 79C, is not whether the proposal will result in direct competition between businesses, but the overall economic impact of the activity on the locality. On this basis, it is clear that the proposal is unlikely to have any substantive adverse impacts within Shoalhaven Heads, and on the contrary, a broader assessment indicates that the activity contributes in a positive sense to the local economy.

6. CONCLUSION

Council has approved the operations of a weekly Produce Fair on the site, subject to conditions.

The operation of a Produce Fair on a weekly basis is considered reasonable given that it provides residents and visitors with a potential supply of fresh produce and gourmet products at regular intervals. These are goods that are generally not available within Shoalhaven Heads.

The Fair has been operating without objection from nearby residents for a number of years, however some concern has been expressed from existing retail premises due to the competition resulting from the activity.

This report has considered the proposal, as required under Section 79C of the Environmental Planning and Assessment Act 1979, and has concluded that the proposal is unlikely to result in unreasonable economic impacts in the locality.

This application seeks to amend conditions to enable the continued operation of the activity in accordance with the original conditions for a further 12 months.

Council's support for the application is sought.



STUART DIXON
TOWN PLANNER C.P.P. M.P.I.A.

**NOTICE TO APPLICANT OF DETERMINATION OF SECTION 96 MODIFICATION
APPLICATION**

BY REFUSAL

Environmental Planning and Assessment Act, 1979

DA06/2915

(DS08/1561)

TO:

The Heads Hotel-Motel Pty Limited
51 River Road
SHOALHAVEN HEADS NSW 2535

being the applicant(s) or persons entitled to act with respect to **DA06/2915** relating to
51 River Road SHOALHAVEN HEADS - Lot 11 in DP 532057

APPROVED DEVELOPMENT:

The conduct of the Shoalhaven Heads Hotel Markets on a once per month basis
until the 21st December 2008.

SECTION 96 VARIATION OF CONSENT

To extend the period for the operation of the Shoalhaven Heads Hotel Markets for a
further twelve months ending the 21st December 2009 and to conduct the Markets on
a weekly basis.

REFUSAL DATE:

22-Jan-2009

Pursuant to the Section 81 of the Act, notice is hereby given that the Section 96 (1A)
Modification Application dated 19th December 2008 sought in relation to
Development Consent DA06/2915 issued in respect of the abovementioned property
has been determined by way of **REFUSAL** for the following reasons:

1. Pursuant to consideration under S79C(1)(a)(iii) the operation of the market on a
weekly basis is contrary to Council's Operation of Markets Policy;
2. Pursuant to consideration under S79C(1)(b) the operation of the market on a
weekly basis is likely to have an adverse impact on the economic viability of a
number of existing businesses in the Shoalhaven Heads locality;

3. Pursuant to consideration under S79C(1)(b) the operation of the market on a weekly basis is likely to have an adverse impact on the residential amenity of the local area;
4. Pursuant to consideration under S79C(1)(e) the operation of the market on a weekly basis is not in the public interests.

Advice to the Applicant

The applicant is advised that period for the use of the market has now lapsed and that operating the market without new Council approval would be illegal.

Should the applicant wish to conduct the market in the future, the applicant is invited to lodge a development application for Council approval.

RIGHTS OF REVIEW AND APPEAL

Development Determination under Environmental Planning and Assessment Act, 1979

*Under section 82A of the Environmental Planning and Assessment Act, 1979 an applicant may request the council to review its determination except where it relates to a complying development certificate, designated development or integrated development. The request must be made **within 12 months** of the date of the receipt of the determination, with a prescribed fee of 50% of the original DA fee.*

*Section 97 of the Environmental Planning and Assessment Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority in relation to this modification a right of appeal to the Land and Environmental Court which must be exercised **within 12 months** of the date of this notice.*

SIGNED on behalf of Shoalhaven City Council:

Signature

**Name Robert Russell
 Development Manager
 Development & Environmental Services Group**

RECEIVED
5 FEB 2009
COUNTER SERVICES

The Heads Hotel
51 River Road
Shoalhaven Heads

ABN 87 115 066 736

RD 09-1000

5 February, 2009

The General Manager
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Dear Sir

DS 08/1561 – 82A REVIEW
HEADS HOTEL – RIVER ROAD, SHOALHAVEN HEADS

Please accept this letter as a request to review your refusal of DS08/ 1561 to extend the Produce Fair at the Heads Hotel.

In support of the application is a legal opinion prepared by Peter Moggach, a Planning Report prepared by Cowman Stoddart Pty Ltd, and a petition containing 218 signatures from residents of Shoalhaven Heads and the general community supporting the Fair.

In addition, I would like Council to consider the following:-

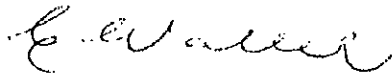
- The original development application was made to Council after our Manager, Tamara Kegg, was provided with advice from the former Mayor Cllr Greg Watson,
- The original application was granted as a modification to our existing use at the site – NOT as a market.
- We spent 12 months promoting the supply of fresh produce to the Shoalhaven Heads and wider community and establishing a weekly tourist event for the town. Council staff then unfairly imposed an unreasonable restriction permitting only monthly operation, despite the investment I had made in establishing and promoting the event. This removes an opportunity for the people of Shoalhaven Heads to have access to fresh vegetables.
- Operators of the Fair are all suppliers of goods to the Heads Hotel. The Fair provides them with an alternative vehicle to sell their wares.

- Our proposal is not a market - see advice from Peter Moggach. Council is unreasonable in applying this policy which has absolutely no relevance to our matter.
- We provided Council with a report to address the planning issues associated with our application, yet Council staff refused the application in haste and without giving due regard to my submission, based largely on biased opinions expressed by competing businesses which have gone unchallenged by Council staff. I consider that the Fair was destined for refusal when the application was being assessed.
- Council's notification process is weighted in favour of receiving objections, rather than considering the view of the whole community by only requesting that written comment is made if there are concerns. Consequently, the supportive community, of which there are many, did not have the opportunity to express this.

Also attached is my record of the outcome of the Shoalhaven Heads Community Forum which was held last night (4th February) and was well attended by 50-60 residents whereby unanimous support was expressed to the Produce Fair. The result of this clearly demonstrates that there is overwhelming support for the continued operation of the Produce Fair by the public. The contents have been confirmed by Councillor Gareth Ward who received representations in relation to the matter.

Finally, I also attach an extract from an email previously supplied to Council's General Manager which gives a synopsis of the background of the matter and other pertinent information.

Yours faithfully



Colin Waller
Licensee – Heads Hotel



STEPHEN RICHARDSON, M.Appl.Sc., BTP, Grad.Dip. Env. Mgt, CPP, MPIA
STUART DIXON, B. Urb. & Reg. Plan., CPP, MPIA

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SECTION 82A REVIEW OF SECTION 96 PROPOSAL DS 08/1561

LOT 11 DP 532057 – NO. 51 RIVER ROAD, SHOALHAVEN HEADS

1. INTRODUCTION

Conditional approval issued under DA 06/2915 to *"Alterations of the Shoalhaven Heads Hotel's Existing Use Rights to include the operation of a Weekly Local Fresh Produce Fair to be conducted at the Front of the Hotel Building (forecourt) for between 8 and 15 stall holders on Saturdays from 7.30 am to 12.30 pm."*

Application was made under DS 08/1561 seeking modification of consent to enable the Produce Fair to continue for a further twelve month period and also to enable the Fair to operate on a weekly basis. Such application was refused on 22 January 2009 for the following reasons:-

1. Pursuant to consideration under S79C(1)(a)(iii) the operation of the market on a weekly basis is contrary to Council's Operation of Markets Policy;
2. Pursuant to consideration under S79C(1)(b) the operation of the market on a weekly basis is likely to have an adverse impact on the economic viability of a number of existing businesses in the Shoalhaven Heads locality;
3. Pursuant to consideration under S79C(1)(b) the operation of the market on a weekly basis is likely to have an adverse impact on the residential amenity of the local area;
4. Pursuant to consideration under S79C(1)(e) the operation of the market on a weekly basis is not in the public interests.

Request is now made for this decision to be reviewed under the provisions of Section 82 A of the Environmental Planning and Assessment Act 1979. This submission contends that Council has not undertaken a proper planning assessment of the application as it has considered Council's Market Policy which has no relevance to this matter, and Council has not undertaken a proper planning assessment to the matters for consideration as required under Section 79C.

Accompanying this request as **Annexure 1** is a legal advice from Mr Peter Moggach of RMB Kearns and Garside, Accredited Specialist in Local Government and Planning Law which has addressed the legality of the proposal and the reasons for refusal.

Furthermore, our submission supporting the Section 96 application the subject of this Section 82A review is attached as **Annexure 2**.

Finally, submitted with our clients request is a series of petitions/letters signed by members of the Shoalhaven Heads community supporting the operation of the produce fair as **Annexure 3**.

2. PROPOSAL

Council is hereby requested to review its decision issued under DS08/1561 pursuant to the provisions of Section 82A.

Furthermore, Council is also requested to consider the following amendments to the proposal as allowed under Section 82A (3A):-

- Operators of the produce fair are restricted to those who supply goods to the Heads Hotel; and
- Maximum of 8 suppliers at any one time,
- Delete condition 3.

It is considered that the first two matters can be addressed by incorporation into an amended condition 27.

The third matter can be dealt with by deleting condition 3, the consequences of which will permit the operation of the Fair into the future without the need for annual review.

All other aspects of the proposal remain the same and the produce fair is intended to be run on a weekly basis.

3. REASONS FOR REFUSAL

As outlined above, the proposal was refused with four reasons being outlined. The following addresses the reasons for refusal.

1. *Pursuant to consideration under S79C(1)(a)(iii) the operation of the market on a weekly basis is contrary to Council's Operation of Markets Policy;*

The proposal is not for a market. The development approved by Council related to the modification of an existing use to enable the conduct of a weekly produce fair. By reference to the advice by Mr Moggach, this is a legitimate approval issued by Council.

Application of the Market Policy is unreasonable and inappropriate in the consideration of this proposal. The Markets Policy was established in part, to provide support for established retailers to minimise the economic impacts of more substantial markets who are able to operate utilising minimal facilities with very few overheads. The Heads Hotel site cannot be compared with that situation given the site is one that has an established commercial use, Council rates are paid on the site, along with all usual business outgoings such as insurances, utilities and maintenance fees. This is clearly different to sites which are ordinarily used for Markets, such as public reserves, playing fields or car parks, most of which are Council owned.

According to the advice of Mr Moggach, the *"markets policy has no direct relevance to the use of the Hotel for the Fair"*. I agree with this position. Mr Moggach also outlines reasons as to why the produce fair differs from markets.

2. *Pursuant to consideration under S79C(1)(b) the operation of the market on a weekly basis is likely to have an adverse impact on the economic viability of a number of existing businesses in the Shoalhaven Heads locality;*

Advice from Mr Moggach is that the *"economic impact of a proposed development upon private individual traders is not a planning consideration to be taken into account in determining a development application"*. Consequently, the provisions of Section 79C do not permit Council to refuse the application based on impacts associated with economic viability of other businesses.

In addition, there does not appear to be any evidence that the produce fair is having adverse impacts. On the contrary, the produce fair has been operating for 2 years and I am advised that all established businesses that were operating at the time of its commencement continue to trade to this day. As such, adverse economic impacts, if any, are unlikely to be substantial. However, as outlined above, this is not a matter in planning considerations.

Furthermore, it is clear from past decisions of the Land and Environment Court that Section 79C requires consideration of the wider economic impacts resulting from this development which were explored in our earlier submission (**Annexure 2**). This position is also supported by the advice of Mr Moggach.

3. *Pursuant to consideration under S79C(1)(b) the operation of the market on a weekly basis is likely to have an adverse impact on the residential amenity of the local area;*

Council's reason does not stipulate the amenity concerns and adverse impacts experienced, however presumably these stem from the submissions that have been made by the public during the exhibition of the Section 96 application.

However, upon reviewing the submissions that Council received, it is noted that:-

- Residents of both adjoining properties within River Road do not object to the development, with one clearly supporting the development, the other raising no objection but requesting consideration be given to applying parking restrictions within River Road. The subject site contains ample parking for the produce fair, which operates at a time unlikely to coincide with the peak parking demands for the Hotel use of the site and as such, there is no reason for vehicles to park within River Road. Council, through the Traffic Committee, is able to recommend imposing parking restrictions within River Road if it sees fit.
- The one adjoining resident within Ravenscliffe Rd who made a submission did not object to the development but requested minor maintenance within the car park to remove built up gravel. This minor maintenance can be undertaken by our client.

Based on the submissions received by Council, there does not appear to be adverse impacts on residential amenity. On the contrary, nearby residents who expressed a view on the produce fair generally support the activity.

4. *Pursuant to consideration under S79C(1)(e) the operation of the market on a weekly basis is not in the public interests.*

There is no evidence that approval of the development will be contrary to the public interest. On the contrary, the proposal appears to have the overwhelming support of residents within Shoalhaven Heads and the wider community as evidenced by the petitions supporting the produce fair, signed by 218 persons, submitted with this request. Furthermore, the matter was discussed at the Shoalhaven Heads Community Forum on 4th February 2009 where I am

advised that there was unanimous support expressed for the produce fair by the 50 persons or so who were in attendance.

4. DELETION OF CONDITION 3

The request to delete condition 3 will remove the need for annual review.

Condition 3 was imposed initially as a way to allow Council to review the operation of the produce fair to reconsider the impacts. This is a common approach for Market proposals however as outlined above and contained within the advice of Mr Moggach, the activity was not approved as a market, but as an extension of the existing use rights.

As the fair has been in operation for two years, Council is well placed to consider its suitability into the future. Having regard to this, the above assessment of the matters relevant for consideration as required under Section 79C has concluded that the operation of the produce fair results in no demonstrable adverse impacts on the locality or the environment, and there is no valid reason why the fair cannot continue into the future.

The current condition will require our client to lodge further applications at considerable expense and is therefore unreasonable.

5. CONCLUSION

This report accompanies a request to review the decision to refuse Section 96 application DS 08/1561 which sought an extension to the operation of a weekly produce fair. The development is amended by proposing that all goods that are sold are restricted to those from operators who supply goods to the Heads Hotel, that a maximum of 8 suppliers be permitted to operate at any one time, and that the fair can continue into the future without the need for annual review.

The assessment has reviewed Council's determination and the reasons for refusal. Council's assessment has considered policies that have no relevance to the proposal, whilst it appears that Council has not undertaken a proper planning assessment of the relevant matters for consideration.

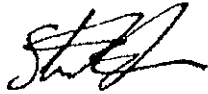
This submission is supported by a legal opinion provided by Mr Peter Moggach, Accredited Specialist in Local Government and Planning Law, and a supportive petition signed by 218 persons.

According to the advice of Mr Moggach, Council clearly has the ability to consent to this application as an extension of our clients existing use rights at the site, and that the reasons

Submission in Support of Section 82 A Review
Weekly Produce Fair
51 River Road, Shoalhaven Head – The Head Hotel

given by Council to its refusal of our client's application are unreasonable. Furthermore, Mr Moggach considers that the reasons for refusal issued by Council are not substantiated.

Council's support for the request is sought.



STUART DIXON C.P.P. M.P.I.A.
TOWN PLANNER

RD09/1000 S82A Review - Public Submissions

Submissions in response to the Notification from 11th February 2009 to 4th March 2009

Submission Number	Names & Addresses	Date Received by Council	Issues (see list below)
1 D09/10329 SUPPORT	Gail Smith 57 River Road SHOALHAVEN HEADS 2535	27-01-2009	1 Market provides the opportunity to purchase fresh produce. 1 Local market farmer now employs extra staff. 1 Visitors to markets still buy from local shops a Shoalhaven Heads. 1 Live next door to markets but have no complaints. 1 Brings local residents together to socialise in a friendly and relaxed atmosphere. 1 Don't let a few companies overrule the majority who use the markets.
2 D09/15180 SUPPORT	Angela Podmore 29 Ravenscliffe Road. SHOALHAVEN HEADS 2535	05-02-2009	2 Market provides the opportunity to purchase fresh produce. 2 Brings local residents together to socialise in a friendly and relaxed atmosphere. 1 Fresh seafood van owned and operated by local people. 1 Local shops still gain repeat business due to isolation of Shoalhaven Heads.
3 D09/15450 SUPPORT	Trevor Asplin 24 Bolt Street SHOALHAVEN HEADS 2535	05-02-2009	3 Market provides the opportunity to purchase fresh produce. 1 Local shops do not carry much quality produce. 1 Local resident are supporting local growers (not Woolworths or Coles). 1 Market benefits local residents and attracts visitors to the village.
4 D09/16373 SUPPORT	G and L Montgomery 77 Northview Close SHOALHAVEN HEADS 2535	06-02-2009	4 Market provides the opportunity to purchase fresh produce. 1 Community Forum (43 people) unanimously support the weekly market. 2 Market benefits local residents and attracts visitors to the village. 1 Healthy competition exists in the community.
5 D09/16516 SUPPORT	Bob King 17 Wells Place SHOALHAVEN HEADS 2535	09-02-2009	5 Market provides the opportunity to purchase fresh produce. 2 Community Forum (43 people) unanimously support the weekly market. 1 Other farms sell fruit and vegetables and wine on a free enterprise basis.
6 D09/16527 SUPPORT	Marilyn Adams 15 Bass Road SHOALHAVEN HEADS 2535	09-02-2009	1 Local residents are dismayed at the decision to close the markets. 1 Market carries a variety of goods not found in the Heads. 1 Local shops cannot supply what the market supplies. 1 Local shop prices are high. 2 Local shops do not carry much quality produce.
7 D09/17791 SUPPORT	Kerrina Swords 2/54 Golden Hill Avenue SHOALHAVEN HEADS 2535	10-02-2009	3 Brings local residents together to socialise in a friendly and relaxed atmosphere. 3 Market benefits local residents and attracts visitors to the village. 2 Local shops do not carry much quality produce. 2 Local residents are supporting local growers (not Woolworths or Coles). 2 Don't let a few companies overrule the majority who use the markets. 3 Community Forum (43 people) unanimously support the weekly market. 1 Council should note the petition in support of weekly market.

8 D09/18472 SUPPORT	Ron and Robyn Prowse PO Box 109 SHOALHAVEN HEADS 2535	11-02-2009	5 Market provides the opportunity to purchase fresh produce. 3 Local shops do not carry much quality produce. 2 Local shops cannot supply what the market supplies. 1 Reasons for refusal does not stand up to rational examination. 1 Driving shoppers away is negatively impacting on local businesses.
9 D09/20220 SUPPORT	Mr K Merrifield Shoalhaven Heads Chamber of Commerce & Tourism Inc. PO Box 53 SHOALHAVEN HEADS 2535	13-02-2009	1 Shoalhaven Heads Chamber of Commerce & Tourism Inc. fully supports market.
10 D09/21242 SUPPORT	Alan and Pat Webb 2 Rygate Place SHOALHAVEN HEADS 2535	16-02-2009	6 Market provides the opportunity to purchase fresh produce. 4 Local shops do not carry much quality produce. 1 Weekly market means less trips to Nowra, thus reducing carbon footprint. 4 Brings local residents together to socialise in a friendly and relaxed atmosphere. 4 Community Forum (43 people) unanimously support the weekly market.
11 D09/21398 SUPPORT	Robyn Flack Secretary SH Community Forum	16-02-2009	5 Community Forum (43 people) unanimously support the weekly market.
12 D09/22154 SUPPORT	Bernie Childs 44 Ravenscliffe Road SHOALHAVEN HEADS 2535	17-02-2009	1 No objection provided loose gravel is removed from hotel car park.
13 D09/23955 SUPPORT	Timmins & Evans 43 Davenport Road SHOALHAVEN HEADS 2535	19-02-2009	7 Market provides the opportunity to purchase fresh produce. 5 Brings local residents together to socialise in a friendly and relaxed atmosphere. 1 Employing local to work at the fair. 4 Market benefits local residents and attracts visitors to the village.
14 Concerns	Allan Osborne	29-02-2009	Details to be provided at the meeting.
15 OBJECTION	I & J Watt	2-03-2009	Details to be provided at the meeting.
16 SUPPORT	Robert Boyd	2-03-2009	Details to be provided at the meeting.

Amendments to Conditions of Consent as requested by Applicant in their 82A review application.

Addition of new condition.

- Stallholders to the produce fair be restricted to include only those supplying goods to the Heads Hotel.

Amendment to Approved use

- Change the number of stallholders from 'between 8 and 15' to a maximum of eight (8) at any one time

Deletion of condition no 3 - "This consent is valid for 1 year and will cease to operate on the 18 December 2007."