

17 February 2011
Nathan Vincent
Implementation & Assessment Branch, Nerang
(07) 5582 8866

PN75152/01/DA2
Application No: MCU201000938

101 Fish And Chips Pty Ltd
C/- PMH Planning
PO Box 4527
ELANORA QLD 4221

Dear Sir/Madam

DECISION NOTICE TO APPLICANT
APPLICATION TYPE: MATERIAL CHANGE OF USE APPLICATION TO ESTABLISH
TAKE-AWAY FOOD PREMISES
PROPERTY DESCRIPTION: LOT 70 ON B8383
PROPERTY SITUATED AT: 101 OLD BURLEIGH ROAD, BROADBEACH.

I wish to advise that on 16 February 2011 the above application was resolved as outlined in the attached document. The conditions indicate whether the Assessment Manager or a Concurrence Agency imposed them.

An extract from the [Sustainable Planning Act 2009](#), which details your appeal rights, is attached.

If you do not appeal the decision, this Decision Notice is taken to be the Development Approval and has effect immediately

Pursuant to [section 342 of the Sustainable Planning Act 2009](#), this development approval will lapse if the development the subject of this approval is not completed by 6 years from the date of this decision. This date is 16 February 2017.

Should you wish to clarify any issues contained in this letter, please do not hesitate to contact Planning Assessment area on telephone (07) 5582 8866.

Yours faithfully

Andrew Powell
SUPERVISING PLANNER MCU CITYWIDE (SOUTH)
For the Chief Executive Officer

NV:JB

Real Property Description	Lot 70 on B8383
Address of Property	101 Old Burleigh Road, Broadbeach
Area of Property	630m ²
Decision Type	Development Permit to Establish a Take-Away Food Premises
Further Development Permits	Plumbing and Drainage Permit
Further Compliance Permits	None
Compliance Assessment required for documents or works	N/A

Note: Please refer to the conditions of approval outlined in this letter to ensure all related approvals are completed. The applicant may need to gain Council endorsement for additional documents prior to obtaining the above Development Permits, Compliance Permits or Compliance Certificates (for example, endorsement of a Management Plan or technical report may be required prior to obtaining an approval for Operational Works). These instances are outlined within the conditions of this approval.

NATURE OF DECISION

- A** Under Delegated Authority the Manager of the Implementation & Assessment Branch approves the issue of a development permit for material change of use for Take-Away Food Premises, subject to the following conditions:

APPROVED PLANS/DRAWINGS

1 Development to be generally in accordance with specified plans/drawings

The development must be carried out generally in accordance with the approved plans/drawings listed below, stamped and returned to the applicant with this decision notice.

Plan No.	Rev.	Title	Date	Prepared by
Plan 001	A	Internal Tenancy Plan	December 2010	PMH Planning
M246-08	D	Parking Bay Setout	January 2009	EBD Consulting

2 Any deviations require further approval

Any proposed deviation from the approved plans/drawings as a result of on-site or in-situ conditions must not be made unless amended plans/drawings are submitted and approved by Council. The development must be carried out in accordance with the approved amended plans/drawings.

3 Notice of commencement

At least 10 business days prior to the commencement of the approved use on the site, the applicant must give Council written notice of the following:

- Application number;
- Site address;
- Name and telephone number (work and after hours) of the a suitable contact person to arrange a site inspection;
- The estimated commencement date for the use.

The notification is to be sent to Council's Development Compliance Team Leader (fax: 07 5596 8080; phone: 07 5582 8184). This notification is in addition to any other notifications required by other conditions of this or other development approvals.

A form is available to assist in providing the information relating to Notice of Works/Commencement requirements. The form can be obtained at Council Offices (Nerang, Bundall and Coolangatta). It also can be found on Council's website at www.goldcoast.qld.gov.au/forms (Building & Development).

ADVERTISING DEVICES

4 Advertising device approval required

No advertising device is to be erected on the premises without the necessary development permit for operational work (advertising device) and/or approval under Council's *Local Law No. 16 (Licensing) and Subordinate Local Law 16.8 (Advertisement)*. The applicant should contact Council's Health, Regulatory & Lifeguard Services Branch on (07) 5581 6140 to discuss approval requirements.

AMENITY

5 Hours of operation

- a All activities associated with the operation of the use are to be conducted only between the hours of 10:00 am to 9:00 pm on Monday to Sunday public holidays included.

6 Location of equipment and ventilation/refrigeration units

All service equipment, mechanical ventilation and refrigeration units associated with the use of the premises must be installed and located to the satisfaction of the Chief Executive Officer so as not to cause nuisance or disturbance to persons outside the curtilage of the premises.

7 No nuisance from lighting

All lighting devices must be positioned on the premises and shielded to the satisfaction of the Chief Executive Officer so as not to cause glare or other nuisance to surrounding residents and motorists

HEALTH AND REGULATORY SERVICES

8 Delivery and collection times

Delivery and collection times at the development are restricted to between the following hours: 7am to 6pm.

9 Exhaust air

All exhaust air shall be discharged to the atmosphere in such a manner that will not cause an odour nuisance to the occupants of the surrounding buildings so as to be in compliance with the *Environmental Protection Act 1994* and to the satisfaction of Council's Health, Regulatory & Lifeguard Services Branch.

10 Commercial waste

All commercial waste shall be stored in accordance with the *Environmental Protection (Waste Management) Regulation 2000*. The commercial waste shall be stored on an imperviously paved area, screened and suitably drained to the satisfaction of Council's Building Services Section and Health, Regulatory and Lifeguard Services Branch. A suitable hose cock and hose shall be provided in the vicinity of such stand or such paved area and a suitable form of roofed enclosure to the waste container area is to be erected.

11 Food operations

Any food operations on the premises must comply with the *Food Act 2006*, *Food Regulation 2006* and the *Australia New Zealand Food Standards Code*. The operator must apply for the necessary Food Licence for Fixed or Mobile Food Premises from Council's Health, Regulatory & Lifeguard Services Branch prior to commencement of the use of the premises.

COMPLETION DATE

12 Completion date

All changes of use the subject of this approval Take-Away Food Premises must be completed by 16 February 2017. Pursuant to section 342 of the *Sustainable Planning Act 2009*, this development approval lapses if the changes of use are not completed by this date.

ADVISORY NOTES TO APPLICANT

B Rights of appeal

The applicant has a right of appeal to the Planning and Environment Court regarding this decision, pursuant to section 461 of the *Sustainable Planning Act 2009*. A copy of that section is attached to the decision notice.

For particular material changes of use, an appeal can also be made to a Building and Development Committee. Please refer to the prerequisites in sections 519 and 522 of the *Sustainable Planning Act 2009*, attached to this decision notice, to determine whether you have appeal rights to a Building and Development Committee.

C Applicant responsibilities

The applicant is responsible for securing all necessary approvals and tenure, providing statutory notifications and complying with all relevant laws.

Nothing in this decision notice alleviates the need for the applicant to comply with all relevant local, State and Commonwealth laws and to ensure appropriate tenure arrangements have been made where the use of/reliance upon land other than that owned by the applicant is involved. Without limiting this obligation, the applicant is responsible for:

- a Obtaining all other/further necessary approvals, licences, permits, resource entitlements etc by whatever name called required by law before the development the subject of this approval can be lawfully commenced and to carry out the activity for its duration;
- b Providing any notifications required by law (by way of example only, to notify the administering authority pursuant to the *Environmental Protection Act 1994* of environmental harm being caused/threatened by the activity, and upon becoming aware the premises is being used for a 'notifiable activity');
- c Securing tenure/permission from the relevant owner to use private or public land not owned by the applicant (including for access required by conditions of approval);
- d Ensuring the correct siting of structures on the land. An identification survey demonstrating correct siting and setbacks of structures may be requested of the applicant to ensure compliance with this decision notice and applicable codes;

- e Providing Council with proof of payment of the Portable Long Service Leave building construction levy (or proof of appropriate exemption) where the value of the Operational Works exceeds \$80,000. Acceptable proof of payment is a Q.Leave – Notification and Payment Form approved by the Authority. Proof of payment must be provided before Council can issue a development permit for the Operational Works. This is a requirement of section 77(1) of the *Building and Construction Industry (Portable Long Service Leave) Act 1991*; and
- f Making payment of any outstanding Council rates and charges applicable to the development site prior to the lodgement of subdivision plans.

D Greenhouse gas emissions

As part of Council's commitment to reducing greenhouse gas emissions Council is encouraging the expansion of the natural gas reticulation network. In particular, the use of natural gas hot water systems will result in significantly less greenhouse gas emissions than equivalent electric storage hot water systems.

The applicant should contact the local natural gas reticulator (APA Group) to arrange an assessment of the suitability of the proposed development for connection to the existing gas reticulation network. Please contact Ramon O'Keefe on 0438708798 or email: ramon.o'keefe@apa.com.au.

E Infrastructure charges

Infrastructure contribution policies for the Water, Wastewater, Recreation, Stormwater and Transport Networks are no longer applicable and therefore monetary contribution conditions for these networks are no longer included in the decision notice. Infrastructure charges for these networks are now levied under the Priority Infrastructure Plan by way of an infrastructure charges notice, which accompanies this decision notice.

Sustainable Planning Act 2009

APPEAL RIGHTS FOR APPROVAL OR REFUSAL OF DEVELOPMENT APPLICATIONS FOR MATERIAL CHANGE OF USE, RECONFIGURATION OF A LOT OR OPERATIONAL WORKS APPLICATIONS.

461 Appeals by applicants

- (1) An applicant for a development application may appeal to the court against any of the following:
 - (a) the refusal, or the refusal in part , of the development application;
 - (b) any condition of a development approval, another matter stated in a development approval and the identification or inclusion of a code under section 242;
 - (c) the decision to give a preliminary approval when a development permit was applied for;
 - (d) the length of a period mentioned in section 341;
 - (e) a deemed refusal of the development application;
- (2) An appeal under subsection (1)(a), (b), (c) or (d) must be started within 20 business days (the applicant's appeal period) after:
 - (a) if a decision notice or negotiated decision notice is given - the day the decision notice or negotiated decision notice is given to the applicant;
 - (b) otherwise, the day a decision notice was required to be given to the applicant.
- (3) An appeal under subsection (1)(e) may be started at any time after the last day of a decision on the matter should have been made.

Sustainable Planning Act 2009

APPEAL RIGHTS TO A BUILDING AND DEVELOPMENT COMMITTEE FOR PARTICULAR MATERIAL CHANGES OF USE.

PLEASE REFER TO THE PREREQUISITES IN SECTIONS 519 AND 522 TO DETERMINE WHETHER YOU HAVE APPEAL RIGHTS TO A BUILDING AND DEVELOPMENT COMMITTEE.

519 Appeal by applicant—particular development application for material change of use of premises

- (1) This section applies to a development application if the application is only for a material change of use of premises that involves the use of a prescribed building.
- (2) However, this section does not apply to the development application if any part of the application required impact assessment and any properly made submissions were received by the assessment manager for the application.
- (3) The applicant for the development application may appeal to a building and development committee against any of the following—
 - (a) the refusal, or the refusal in part, of the application;
 - (b) any condition of the development approval and another matter, other than the identification or inclusion of a code under section 242, stated in the development approval;
 - (c) the decision to give a preliminary approval when a development permit was applied for;
 - (d) the length of a period mentioned in section 341;
 - (e) a deemed refusal of the application.
- (4) An appeal under subsection (3)(a), (b), (c) or (d) must be started within 20 business days (the applicant's appeal period) after—
 - (a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or
 - (b) otherwise—the day a decision notice was required to be given to the applicant.
- (5) An appeal under subsection (3)(e) may be started at any time after the last day a decision on the matter should have been made.

522 Appeal by applicant—condition of particular development approval

- (1) This section applies to a development application if—
 - (a) the application is only for a material change of use that involves the use of a building classified under the BCA as a class 2 building; and
 - (b) the proposed development is for premises of not more than 3 storeys; and
 - (c) the proposed development is for not more than 60 sole-occupancy units.
- (2) However, this section does not apply to the development application if any part of the application required impact assessment and any properly made submissions were received by the assessment manager for the application.
- (3) The applicant for the development application may appeal to a building and development committee against a condition of the development approval.
- (4) The appeal must be started within 20 business days (the applicant's appeal period) after—
 - (a) if a decision notice or negotiated decision notice is given—the day the decision notice or negotiated decision notice is given to the applicant; or
 - (b) otherwise—the day a decision notice was required to be given to the applicant.
- (5) In this section—

sole-occupancy unit, in relation to a class 2 building, means a room or other part of the building used as a dwelling by a person to the exclusion of any other person.

storey means a space within a building between 2 floor levels, or a floor level and a ceiling or roof, other than—

- (a) a space containing only—
 - (i) a lift shaft, stairway or meter room; or
 - (ii) a bathroom, shower room, laundry, water closet or other sanitary compartment; or
 - (iii) accommodation for not more than 3 motor vehicles; or
 - (iv) a combination of any things mentioned in subparagraph (i), (ii) or (iii); or
- (b) a mezzanine.