



# Report of Development Application

## Pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979

### APPLICATION DETAILS

Application No.:	DA21/0675
Modification No.:	N/A
Council File No.:	D/2021/0675
Date of Lodgement:	15/11/2021
Applicant:	KJ Wilson 67 Coleman St TURVEY PARK NSW 2650
Proposal:	Alterations and additions to existing café and proposed neighbourhood shop extension
Description of Modification:	N/A
Development Cost:	\$515000
Assessment Officer:	Emma Molloy
Determination Body:	Council
Other Approvals	Nil
Type of Application:	Development Application
Concurrence Required:	No
Referrals:	Internal
Adjoining Owners Notification:	Yes, 2 to 9 December 2021
Advertising:	No
Owner's Consent Provided:	Yes
Location:	The subject site is located on the northern side of Coleman Street, on the corner of Coleman and Norman Streets.

### SITE DETAILS

Subject Land:	67 Coleman St TURVEY PARK NSW 2650 Lot 1 DP 743340
Owner:	DA Wilson & KJ Wilson

### PLANNING CONTROLS / STATUTORY CLASSIFICATION

*Pursuant to Part 4 (Division 1)*

#### Description of Development

The proposed development seeks consent for alterations to the existing building (café) which

include:

- Demolition of part of the northern wall and removal of windows on the eastern and western elevations, removal of internal fittings and fixtures;
- Construction of an addition to the eastern elevation to comprise of a retail operation (neighbourhood shop) with facilities and breezeway to provide an entrance and link to the existing building and new addition;
- Construction of new deck to the rear of existing building and addition to be used as outdoor seating;
- Reconfiguration of the existing cafe to allow for updated kitchen, new point of sale area, cool room, storage and office areas; and
- Formalised carparking area and new access gate.

The proposed retail use and existing café will utilise the existing operating hours approved by DA20/0584 being 6:30am to 5:30pm Monday to Friday and 6:30am to 4pm Saturday, Sunday and public holidays. The retail element (neighbourhood shop) will be used for the sale of takeaway food made on the premises, homewares and gifts. It should also be noted that the existing shed within the rear of the site will contain a refuse area for the storage of bins.

### **The Site and Locality**

The site is legally known as Lot 1 DP743340 located at 67 Coleman Street, Turvey Park. The site is located on the northern side of Coleman Street, on the corner of Coleman and Norman Streets. The subject site is rectangular in shape and is 562.80m<sup>2</sup> in area located within the Heritage Conservation Area. The site currently contains an existing commercial premise currently being used as a café. The building is traditional in nature with a tiled entrance and an attached verandah following the building around the corner. The existing building is a prominent feature in the streetscape and is considered to contributory to the Heritage Conservation Area.

The surrounding locality is predominantly residential in nature however other commercial uses are present with a commercial premise to the west of the subject site and the Riverina Business Enterprise Centre to the south. Kildare College (formally Mt Erin High School) is located to the east of the subject site.

### **Easements and Covenants**

The subject land is not benefitted or encumbered by any easements.

### **Previous Development Consents**

- DA20/0584 - Alterations to existing café within the Heritage Conservation Area including use of existing window on southern elevation, change in hours of operation, replacement of existing signage, repainting of exterior and installation of fans and replacement lighting, and clear blinds to outdoor seating area.
- ADA13/0034 - Modify trading hours (for Friday and Saturday until 10pm);
- DA01/1018 - Outdoor eating area addition to existing café;
- BA300/90 - Change of use pizza shop to general store including takeaway;
- BA298/81 - Alterations to existing shop; and
- BA39/81 - Change of use to existing premises.

**MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1)****Section 4.15(a)(i) - The provisions of any environmental planning instrument (EPI)****Wagga Wagga Local Environmental Plan 2010**

Under the provisions of the WWLEP2010, the subject site is within the B1 Neighbourhood Centre zone.

**Part 2 Permitted or prohibited development Land Use**

**A *cafe*** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

**A *neighbourhood shop*** means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, but does not include neighbourhood supermarkets or restricted premises.

The above land uses are permissible in the B1 Neighbourhood Centre zone.

**1 Objectives of zone**

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

The proposed development seeks alterations and additions to an existing premise to comprise of a retail component (neighbourhood shop) and alterations to improve the over functionality of the existing café. The proposal achieves the objectives of the zone by allowing an existing business to provide additional facilities to serve the needs of people who live or work in the surrounding neighbourhood.

**Part 5 Miscellaneous provisions****5.10 Heritage Conservation**

The subject site is within a Heritage Conservation Area, in the Residential Precinct. Pursuant to Part 5.10(2)(a), Development Consent is required for altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance) within a Heritage Conservation Area. The subject site is within the Heritage Conservation Area. The subject site contributes to the heritage significance of the surrounding area as it reflects the traditional corner shop that behaved both as a place to purchase necessities and as an important place for the community. The proposed development includes alterations and additions to the existing building including an addition to the eastern elevation. The addition makes provision for a retail space and deck. The additions have been designed to be subservient in scale to the existing building and uses acceptable materials that will not have an adverse impact on the Heritage Conservation Area.

**5.21 Flood Planning**

The subject site is not identified as within the Flood Planning Area (FPA) for MOFFS therefore this section does not apply however the site is mapped as prone to inundation in a 1:100 year event. Flooding will be assessed within the DCP section of this report.

## **Part 7 Additional Local Provisions**

### **7.6 Groundwater Vulnerability**

The objective of this clause is to protect and preserve groundwater sources. This clause applies to land identified as “Groundwater” on the Water Resource Map. The subject development is not development specified for the purposes of this clause therefore this clause does not apply.

## **State Environmental Planning Policies (SEPPs)**

### **State Environmental Planning Policy (Resilience and Hazards) 2021**

Clause 4.6 states that a consent authority must not grant consent unless it has considered whether the land is contaminated and if the land is contaminated, it is satisfied that the land is suitable in its current state for the purpose for which the development is proposed to be carried out. The subject site was subdivided for residential use in 1923 and has been traditionally used as a corner store. The site is not identified on Council’s contaminated Land Register and as such the subject site is considered to be suitable for the proposed development and no further investigation is deemed necessary.

### **Section 4.15(1)(a)(ii) - Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority**

No relevant planning instrument under this clause is currently the subject of public exhibition or comment.

### **Section 4.15(1)(a)(iii) - The provisions of any development control plan**

#### **Wagga Wagga Development Control Plan 2010**

Proposed development complies with the development standards of the Wagga Wagga Development Control Plan 2010 as follows:

#### **Section 1 - General**

##### **1.10 Notification of a Development Application**

The proposed development was notified in accordance with Council policy for a period of 7 days from 2 to 9 December 2021. One submission was received. The submission will be addressed later in this report.

##### **1.11 Complying with the Development Control Plan 2010**

The proposed development seeks to vary C1 within Section 2.2 in relation to off-street parking requirements. The development seeks to vary C1 and a submission in regards to this control have been received. Therefore, the proposed development must be determined by Council. An assessment against the variation is contained within Section 2.2 of this report.

#### **Section 2 - Controls that Apply to All Development**

##### **2.1 Vehicle Access and Movements**

The development does not propose any alterations to the existing vehicle access from Coleman Lane which is considered acceptable and generally complies with the objectives and controls within this section.

##### **2.2 Off-street Parking**

The subject site currently does not make any provision for off-street parking. As part of the development two off-street car parks will be provided in the rear of the site. Parking requirements are detailed below:

A café outside of the city centre is required to provide 1 space per 10m<sup>2</sup> GFA or 1 space per 3 seats whichever is greater

Existing GFA 70m<sup>2</sup> = 7 car parks (as this is the existing impact this will be applied as a credit). Additional floor space 71.66m<sup>2</sup> GFA = 7.16 car parks. Total carpark (proposed and existing) = 14.16. Credit for existing floor space = 14.16 - 7 = 7.16 car parks. Please note that the breezeway was not counted in the calculations as there is no seating proposed in this area and therefore no additional impact in terms of parking. The deck area was included in the calculations as this area will contain outdoor seating. Neighbourhood shop GFA = 56.98m<sup>2</sup> = 2 spaces

Retail (neighbourhood shop) 1 space per 33m<sup>2</sup> GFA. Where the GFA is less than 100m<sup>2</sup> consideration can be given to a reduction in parking rates if it can be demonstrated that there is adequate parking available in the vicinity of the site.

Total parking required 7+2 = 9 spaces Total parking proposed = 2 spaces Shortfall = 7 spaces

The above equates to a need for 9 car parking spaces. The proposal results in a shortfall of 7 car spaces. Justification was provided by the applicant which stated:

*"The proposal is seeking Council's approval for the reliance on street parking to cover the 5 spaces, resulting in shortfall of 7 spaces. The site frontage is considered to allow for 2 cars on Coleman Street and 6 cars on Norman Street. Historically parking on the street is an acceptable option for neighbourhood shops. The 10 available spaces (combined off-street and on-street parking) is considered acceptable to provide for the café operations. The departure from the DCP is considered justifiable in this context".*

Additional information was also requested where the applicant provided further justification:

*More than 100 on-street spaces are available within 300m of the site, noting some are time limited and/or have special allowances for residents. 9 spaces are required by the DCP and a variation from this requirement is being sought with this DA. The parking proposed on site, 2 spaces, is considered the best resolution to address the site limitations caused by the historic land use, existing building design, amenity of laneway users and the restricted laneway access (size). The retention of the rear garden instead of conversion to a limited carpark provides shade and cooling and adds to the character associated with the street and B1 Neighbourhood Centre zone. The locality has been historically planned with on-street parking as the method of servicing neighbourhood corner stores and surrounding residences, with wide avenues and laneways providing access to private parking for residential properties. There is no change to the current use or purpose served by on-street parking. There is negligible change in impacts to the surrounding dwellings from the continued reliance on street parking. It is considered the proposal is consistent with the historic*

*intent and modern interpretation and use of urban areas afforded by the DCP. The level of service provided by the road design is reasonable as confirmed by other Council approvals for corner stores (cafes) of this nature. The previous approvals for the development have shown there are no engineering, parking, or safety concerns associated with the use of on-street parking in very similar situations. Parking signs present in the area clearly identify areas available for parking”.*

It should be noted that the submitted SEE has based parking numbers on the requirements for cafes in the city centre, the assessment above used the parking rate for cafes and shops outside of the city centre as the subject site is not located within the city centre.

Traditionally the site was not provided with off-street parking like most corner shops, the purpose was to provide essential services and supplies in a walkable distance from the surrounding residential neighbourhood before cars became common. As the purpose of neighbourhood shops evolved many neighbourhood shops went into disuse including many within Turvey Park. Although over time the uses of the neighbourhood shops within this locality has changed, by allowing development and changes of use the locality has kept its vibrancy and the existing café supports the surrounding uses in accordance with the objectives of the zone. Whilst there is now a heavy reliance on car travel by customers, the site will continue to serve the immediate locality thereby providing some relief with regard to parking particularly with regard to customers from surrounding residential properties, nearby schools and businesses. The addition of the breezeway, deck as well as updated facilities within the café will provide an accessible premise that will cater for the predominant clientele of the existing café.

It should also be noted that by providing the required car parks this would place an unreasonable impact on the laneway itself and impact on the amenity of the surrounding neighbourhood especially if car parks were provided in the rear yard where the loss of greenspace would be inconsistent with the residential nature of the surrounding sites to the east and south. Both Norman and Coleman Streets are wider than standard residential streets with car parking provided on each side. Parking is also available on Trevor Street which is in the vicinity of the subject site. In addition, the retail component (neighbourhood shop) will supplement the café and therefore it will likely serve customers already visiting the site. It is recommended that the variation requested with respect to the provision of parking for this development be supported for these reasons.

### 2.3 Landscaping

The existing building is built to boundary and as such offers very little opportunity for landscaping. Most landscaping on the site is in the form of street trees and a rear yard. The proposed development will remove some of the landscaped area in the rear yard to allow for the deck however this is considered reasonable as the proposed development will improve the overall functionality and amenity within the site. It should also be noted that no tree removal is included in the application and therefore the existing amenity provided by these trees will remain.

### 2.5 Safety and Security

The proposed development will provide an accessible entrance and decrease areas of concealment by being built to boundary on the eastern side. By providing additional glazing facing the street in the retail component of the building this will provide further opportunities for passive surveillance. The development will also provide an updated takeaway window on the western side facing Norman Street which provide further activation of the street and will mitigate potential impacts to the neighbouring residential development in Coleman Street. The proposed development is considered to comply with the objectives



and controls within this section.

### **Section 3 - Heritage Conservation**

#### **3.3.2 Residential Precinct**

The subject site is currently zoned as B1 Neighbourhood Centre however the surrounding locality is predominantly a residential area. The controls largely relate to residential dwellings and as such are not applicable. However, given the existing building reflects the residential nature of the surrounding development as it is similar in form and scale to the surrounding dwellings and at one time did serve a residential purpose behind the existing shopfront comment on this section is warranted.

The proposed development seeks to improve the overall functionality of the site. In terms of built form the addition is contemporary in nature. Whilst this will impact on how the building is viewed in the street the additions have been designed to be lower in scale than the existing building and therefore do not distort the original form. Also the addition has been setback from the Coleman Street frontage to allow the original building to be the predominant element within the streetscape.

Council is concerned about the colours proposed within the SEE with the cladding on the addition being a black Lysaght “enseam” cladding with painted brick walls and glazing. Black is generally not supported within the HCA as black has the ability to distort built form. Therefore, a condition will be imposed to provide a revised set of colours prior to the issue of a construction certificate.

### **Section 4 - Environmental Hazards and Management**

#### **4.2 Flooding**

The subject site as noted previously in this report is not located within the FPA for MOFFs however the site is identified as prone to inundation in a 1:100 year event. Given that the site is not mapped within the FPA inundation is limited to 150mm. The additions follow the existing floor height which is above the depth of inundation. There are no relevant controls in the DCP in relation to overland flow and therefore considering the depth of inundation is minimal and the existing floor level is above this height, the proposed development is considered compatible with the flood hazard of the land and will not have an adverse impact on flood behaviour.

### **Section 5 - Natural Resource and Landscape Management**

#### **5.4 Environmentally Sensitive Land**

Environmental sensitivities have been previously assessed within Section 7.6 of this report.

### **Section 10 - Business Development**

#### **10.3 Local Centres**

The proposed development includes an addition to improve the overall functionality of the site. The addition comprises of a substantial amount of glazing to provide an active street front to Coleman Street. Also, as part of the subject development the takeaway coffee window will be moved to the Norman Street frontage to mitigate existing impacts to the adjoining dwelling to the east and provide further activation of Norman Street.

Whilst the development is built to boundary on the eastern side which will result in a solid blank wall to the adjoining dwelling to the east, this will provide privacy and noise attenuation to the subject dwelling. It should be noted that a solar diagram was provided on lodgement of the application and updated in response to a submission received. The diagram identifies overshadowing to the windows of the adjoining dwelling at 3pm during the winter solstice. As

the windows (bedroom windows) do not serve the primary living area of the dwelling and will not be impacted by shading from the development until 3pm, the impact is considered reasonable.

Two formal car parking spaces will be provided with access from the lane which is considered suitable given the potential impacts on the laneway and the constraints of the site as assessed above. Delivery vehicles will park at the rear and will deliver via the rear door closest to the kitchen and cool room. The building is not 200m<sup>2</sup> and therefore is not required to provide bicycle parking in accordance with C6 however ample space is available in the rear of the site.

Mechanical ventilation is not shown on the submitted plans however a condition will be imposed to require ventilation be located away from the dwelling to the east and be operated in accordance with the Protection of the Environment Operations Act (POEO Act). There are no proposed changes to the existing hours as approved as part of DA20/0584.

#### Section 4.15(1)(a)(iia) - Planning Agreements

No planning agreements have been entered into under section 7.4.

#### Section 4.15(1)(a)(iv) - any matters prescribed by the regulations

Matters prescribed by the regulations have been satisfied.

### SECTION 4.15(1)(B) - LIKELY IMPACTS OF THAT DEVELOPMENT

	Satisfactory	Not Satisfactory	Not Relevant	Comment
Context & Setting	x			The proposed development involves alterations and additions to an existing café to improve the overall functionality of the site. The alterations include reconfiguring of the internal spaces and the addition of a deck, breezeway and retail component built to the eastern boundary. The addition has been setback from the original building and is of a smaller scale. Also a considerable amount of glazing is used to provide interaction with the street. This ensures the original building takes precedence in the context and setting of the site. This is considered acceptable.
Streetscape	x			The proposal involves elements that will result in changes to the existing streetscape. The addition has been well articulated from the original structure and is not designed to be a copy, rather the structure is designed to be of a smaller scale with a substantial amount of glazing to not impact on the heritage significance of the building and the streetscape. This will allow for the development to be read and interpreted. The proposal also includes other works including a takeaway window to Norman Street which will activate the street and mitigate impacts from where the takeaway window is currently located on Coleman Street. There is some concern over the proposed colours including the "enseam" cladding to the addition. Therefore, a condition will be imposed to require revised



				colours prior to the issue of a construction certificate.
Traffic, access and parking	x			The proposed development provides two formal car parks in the rear of the site. A variation to the relevant control within the DCP has been proposed and assessed above. The variation is supported on the basis that the surrounding street network is able to accommodate the shortfall in parking and that by providing a car park in the rear of the site would possibly result in an unacceptable impact on the laneway and a loss of greenspace which would impact on the adjoining dwelling to the east and the amenity of the locality. The proposed parking will be accessed off the rear lane which is considered acceptable.
Public Domain	x			The proposed alterations are considered to be acceptable and will improve the overall functionality of the site by providing an accessible entrance from Norman Street.
Utilities	x			All essential services are connected to the subject site.
Heritage	x			As addressed in this report.
Other land resources	x			None identified.
Water Quality & Stormwater	x			The proposed additions will be conditioned to dispose of stormwater appropriately subject to a s68 Activity Approval.
Soils, soil erosion	x			Minor earthworks are expected. Conditions in relation to erosion and sediment control will be imposed as part of any consent.
Air and microclimate	x			None identified.
Flora and Fauna	x			The proposed development does include the removal of a small amount of landscaping in the rear yard to accommodate the deck however no trees are proposed to be removed as part of the application. As a result of the proposed works an appropriate amount of landscaping will remain.
Waste				A condition of consent will be imposed to ensure that construction waste be disposed of in an appropriate manner. The proposal also makes provision for waste storage in the rear shed. The area is located away from the adjoining dwellings and closed off to patrons therefore the location is considered suitable.
Energy	x			None identified.
Noise & vibration	x			The proposed development does not seek to alter the existing operating hours. However, construction works are likely to impact on adjoining dwellings therefore conditions of consent will be imposed in regards to appropriate hours of construction.
Hours of operation			x	The proposed development does not seek to alter the existing hours of operation.
Natural hazards - Flooding - Bushfire Prone Area map	x			As discussed above the site is not identified within the FPA for MOFFs but is mapped as prone to inundation in a 1:100 year event. This means that the extent of inundation is limited to 150mm. The proposed development will utilise the existing floor height which is above the level of inundation which is considered acceptable.

Technological Hazards	x			None identified.
Safety, security and crime prevention	x			The proposed development will continue to provide passive surveillance within the street. No adverse impacts have been identified.
Social impact in locality	x			The proposal allows for the subject site to be maintained and improved to suit the needs of the local business currently utilising the site. The site offers an important focal point within the locality which will have a positive social impact.
Economic Impact in Locality	x			The subject site is currently utilised by a local business. The proposal will allow the existing building to be adapted to suit their needs and such will have a positive economic impact.
Site design and internal design	x			No adverse impacts have been identified.
Overlooking - overshadowing	x			The proposed development will be built to the eastern boundary. A solar diagram showing the extent of overshadowing on the windows of the adjoining dwelling was submitted on lodgement of the application and revised to address the submission received. The diagram shows overshadowing to the windows from 3pm on the winter solstice. The windows are to bedrooms and not the primary living areas. The windows will receive an adequate amount of natural light during the day therefore the impact is considered reasonable. In addition by providing a solid wall on the boundary, this will mitigate noise and privacy impacts to the adjoining dwelling which is considered reasonable.
Landscaping	x			Not relevant.
Construction	x			To comply with the BCA.
Private open space			x	The site is an existing commercial premise, private open space is not required.
Cumulative Impacts	x			None identified.
Disabled access	x			The proposed development will improve access to the site. The alterations will also improve circulation spaces and provide an accessible bathroom. Seating is shown in the breezeway to show how the site will be used. However considering the width of the breezeway, seating in this area will not afford an adequate amount of circulation space to allow for wheelchairs, walkers or prams and therefore a condition will be imposed to require that this area remains clear.
Signage			x	No signage is proposed as part of this application.
Setbacks, Building Envelopes			x	The proposed development will utilise the existing setbacks on the southern and western boundaries. The development will be built to boundary on the eastern elevation and therefore will be required to have a fire rated wall in accordance with the BCA.

### Section 733 of the Local Government Act 1993

Section 733 of the Local Government Act 1993 provides that Councils will not incur liability for decisions or omissions concerning flood liable land or land subject to the risk of bushfire have been considered. A risk assessment has been completed and Council will be able to demonstrate that it has acted appropriately in its decision making when defending claims in liability or in circumstances where administrative decisions are challenged.

### **Flooding Risk Assessment**

Matters relating to flooding have been previously assessed in regards to the WWLEP 2010 and WWDCP2010 within this report. The above assessment supports the application.

### **Bush Fire Risk Assessment**

The subject site is not identified as prone to bushfire therefore no further assessment is required.

### **The Principles of Ecologically Sustainable Development**

*The following are principles of ecological sustainability:*

#### **1 The precautionary principle**

*Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

*In the application of the precautionary principle, public and private decisions should be guided by:*

*(a) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*

*(b) an assessment of the risk-weighted consequences of various options.*

*The principle requires decision-making to give the environment the benefit of the doubt.*

#### **2 Intergenerational equity**

*The present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations (that is, a partnership among all of the generations that may use or expect to benefit from the nation's resources).*

#### **3 Conservation of biological diversity and ecological integrity**

*Conservation of biological diversity and ecological integrity should be a fundamental consideration.*

#### **4 Improved valuation, pricing and incentive mechanisms**

*Environmental factors should be included in the valuation of assets and services:*

*(a) polluter pays (that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement), and*

*(b) the users of goods and services should pay prices based on the full cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste, and*

*(c) environmental goals having been established should be pursued in the most cost-effective way by establishing incentive structures, including market mechanisms which enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.*

The proposed development will not result in any anticipated irreversible environmental

damage, the proposal utilises an existing commercial site and therefore is not considered to impact on biological diversity or ecological integrity. The proposal is consistent with the precautionary principle to the extent that all potential threats to the environment have been identified and assessed. Accordingly, the principles of ESD are considered to have been followed.

#### **Section 4.15(C) - The Suitability of the site for the development**

The subject land located at 67 Coleman Street is considered to be suitable for the proposed development because it is ancillary to the existing use of the site.

#### **Section 4.15(d) - any submissions made in accordance with the Act or the regulation**

Referrals - The proposed development was referred to the relevant Council Officers. No concerns were raised. Standard conditions imposed.

Notification - The proposed development was notified for a period of 7 days from 2 to 9 December 2021. One submission was received.

Public Submissions and those from public authorities - One submission was received during the notification period. The submission raised concerns regarding patron numbers, the use of the rear garden area as an outdoor dining space, carparking, noise, privacy, the impacts on the building being built on the boundary and the submitted shadow diagrams. The applicant has provided a response to the submission. The submission is addressed below:

##### **Patron Numbers**

The submission raised concerns in regards to the increase in patron numbers stating that the submitted SEE noted only minimal environmental impact which is insufficient. The applicant provided comment noting that patron numbers for the café are limited by the available seating, proposed internal layout and reduced rear garden area. Proposed seating was also provided by the applicant which showed 86 seats both internally and externally with 20 seats in the rear yard and 16 seats on the deck. Given that the rear deck will be screened by the proposed addition, the seating within the rear yard is considered to have more of an impact to the adjoining dwelling. It should be noted that the proposed seating plan did not show the whole of the site and therefore a condition will be imposed to provide clarification prior to the issue of a construction certificate. However, 20 seats within the rear yard is not considered unreasonable given the current hours of operation (being to 6:30am to 5:30pm Monday to Friday and 6:30am to 4pm Saturday and Sunday). Additionally, as a result of the proposed addition the seating area will be located lower in the rear yard away from internal windows of the adjoining dwelling. Existing vegetation within this area will screen patrons from possible views from the deck of the adjoining dwelling.

##### **Outdoor dining space**

The proposed development includes the use of the rear as an outdoor dining space. Dining within the rear yard will be somewhat limited by the addition. The submitter provided comment that the use of the area for outdoor dining has never been approved and asked for clarification. The use of the rear garden area as an outdoor dining area is included with this application. Information was provided by the applicant which showed 20 seats within this area. This is considered reasonable and is less than the numbers then the numbers currently occupying the space without approval.

##### **Carparking**

The submitter has raised previous concerns in regards to carparking. It should be noted that a previous approval for the site required off-street parking. DA011018 did require the

provision of 4 parking spaces to be made available on the site however the outdoor dining area approved as part of that application was never constructed and therefore the parking was not required or enforced. The subject application does seek to vary the control as assessed above which is relevant to this application. The submitter stated that the parking is not adequate as the 2 parking spaces proposed are for staff only and do not incorporate patron parking which is currently limited to off-site, creating traffic congestion in the neighbourhood and prompting hazards. The site is a traditional corner shop which historically has not provided off-street parking rather relying on on-street parking. Parking has been previously assessed in this report with the conclusion that on-street parking will adequately cater for parking demand generated by the development. Also by providing the required amount of parking in the rear of the site, all greenspace in this area would be lost and as a result would have an adverse impact on the amenity of the locality.

### **Signage**

The submitter also raised concerns in regards to signage within the street which can be addressed by Council separately if Council considers that this is required. No additional signage has been proposed under this application.

### **Noise**

The submitter raised concerns with the current noise levels and previous conditions of consent imposed in regards to noise. The submitter stated that noise from the café is audible within more than one habitable room within the dwelling and requested a Noise Impact Assessment to determine the full impact of the development. The development provides a solid brick wall on the eastern boundary which will cover the length of the two habitable rooms most impacted by the current business operations. The wall will provide noise attenuation and privacy to the dwelling which is considered reasonable given that the land is zoned as B1 Neighbourhood Centre and therefore some impact is expected. Outdoor dining numbers have also been limited by the proposed addition. The applicant provided a seating plan which showed 20 seats within the rear garden area which is a reduction from 60 as noted in the submission. A condition of consent will be imposed to restrict amplified or acoustic music within the deck and other outdoor areas.

### **Privacy**

The submitter raised concerns in regards to privacy stating that Section 9.1.5.10 is not complied with. It should be noted that Section 9.1.5.10 of the DCP is relevant to R3 zoned land within the Staunton Estate and therefore the controls within this section do not relate to the subject application. However, privacy is considered as part of any assessment. The proposal includes a wall built to boundary on the eastern side, whilst this will impact on the adjoining dwelling the impact as assessed in this report is considered reasonable as the wall will screen the dwelling from the business operations and provide privacy and noise attenuation not currently available.

### **Impacts on the building being built on the boundary**

The submitter raised concerns in regards to development being built to the boundary. The submitter provided comment against Section 9.3.7 which relates to residential development. The proposed development is for a commercial enterprise on land that is zoned as B1 Neighbourhood Centre therefore these controls do not apply to the proposed development. The impact of the building being built to the eastern boundary has been assessed earlier in the report and considered reasonable. The submitter also raised concerns in regards to venting of the bathroom facilities as these are proposed within vicinity of the existing dwelling. A condition of consent has been imposed to require mechanical ventilation to be away from the adjoining dwelling and an amended plan submitted for approval prior to the issue of a construction certificate. Mechanical venting will also need to be operated in

accordance with the Protection of the Environment Operations Act to mitigate impact on the surrounding dwellings.

### **Shadow diagrams**

The submitter raised concerns with the shadow diagrams submitted on lodgement of the application. The diagrams did not show the window hoods on the dwelling. A revised shadow diagram was submitted with window hood showing that the proposed development would overshadow the dwelling at 3pm during the winter solstice. This is considered reasonable given that the dwelling will receive adequate solar access during the day.

### **Section 4.15(e) - the public interest**

The public interest is a broad consideration relating to many issues. Taking into account the full range of matters for consideration under Section 4.15 of the Environmental Planning and Assessment 1979 (as discussed within this report) it is considered that approval of the application is the public interest.

### **Other Legislative Requirements**

#### **Section 1.7 of the Environmental Planning and Assessment Act 1979 and Part 7 of the Biodiversity Conservation Act 2016 (Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats)**

Section 5AA and Part 7 of the Biodiversity Conservation Act 2016 (Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats)

There are a number of tests to determine whether the proposed triggers the NSW Biodiversity Offset Scheme under the NSW Biodiversity Conservation Act 2016 and results in the need for further assessments or offsets.

- 1. Is the subject site identified as an area of outstanding biodiversity value on the biodiversity values map?*

No

- 2. Does the amount of native vegetation being removed exceed the biodiversity offsets scheme threshold.*

No native vegetation is proposed to be removed.

- 3. Test of Significance - the test to determine whether the proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats.*

Given that no native vegetation is being removed and the absence of any recorded endangered flora or fauna on the site of the proposed development, is not anticipated to significantly affect threatened species or ecological communities or their habitats.

Based on the above assessment it is satisfied that the development will not trigger the Biodiversity Offset Scheme.

#### **Development Contributions - Section 7.11/Environmental Planning & Assessment Act & Section 64 Local Government Act, 1993 and Section 306 Water Management Act, 2000**



Section 7.12

As the proposed development will cost \$515,000 (as per the Cost Summary Report) and it increase the GFA of the building Section 7.12 contributions are required. The rate will be 1%.

$$\begin{aligned}\text{Section 7.12} &= 1\% \times \$515,000 \\ &= \$5,150\end{aligned}$$

Section 64 Sewer

The proposed development has an area of 181m<sup>2</sup> additional Café floor area (as measured from the plans submitted).

Section 64 sewer contributions for this DA are based on the floor area of additional café space and the rate included in the Water Directorate Guidelines of 0.01per m<sup>2</sup> of office space.

The calculation of Section 64 Sewer contributions is as follows:

$$\begin{aligned}\text{Section 64 Sewer (base)} &= 51.5\text{m}^2 \times 0.01 \times \$3,538 \\ &= \$1,822\end{aligned}$$

$$\begin{aligned}\text{S64 Sewer CPI} &= \$1,822 \times 118/100.5 \\ &= \$2,139 \text{ (nearest dollar)}\end{aligned}$$

Section 64 Stormwater

The Stormwater Addendum applies and states “Section 64 Stormwater infrastructure contributions will be imposed when a building is constructed based on the methodology detailed in the draft Development Servicing Plan Stormwater 2020 Implementation Guide. This method will apply until Council updates the Wagga Wagga City Council Development Servicing Plan Stormwater”.

The methodology used to calculate the Section 64 Stormwater contribution in the draft Stormwater Implementation Guide uses the following formula.

$$\begin{aligned}\text{Stormwater Infrastructure Contribution} \\ &= \text{New Impervious Area (m}^2\text{)} \times \text{Stormwater DSPm}^2 \text{ rate} - \text{any credits}\end{aligned}$$

Therefore, the Section 64 Stormwater contribution is calculated based on the following formula.

$$\text{S64 Stormwater (base)} = (181\text{m}^2 - 15\text{m}^2) \times \$1,721/800 = \$357$$

$$\text{S64 Stormwater CPI} = \$357 \times 118/87.5 = \$479 \text{ (nearest dollar)}$$

**Referrals:**

Building Surveyor: Yes, no concerns raised. Standard conditions imposed.

Plumbing Inspector: N/A

Subdivision Engineer: Yes, no concerns raised. Standard conditions of consent imposed.

Environmental Officer: N/A

Parks & Recreation Officer: N/A

**Other Approvals:**

Nil

### Conclusion:

An assessment of the application has resulted in the application being supported on the following grounds:

- The application is for alterations and additions to the existing building within the B1 neighbourhood Zone which is permitted with consent.
- The development complies with the requirements of the Environmental Planning and Assessment Act 1979 and will not compromise the outcomes sought within the Wagga Wagga Local Environmental Plan 2010.
- An assessment of the application against the relevant provisions within the Wagga Wagga Development Control Plan 2010 demonstrates that the proposed development will not cause any significant adverse impacts on the surrounding natural environment, built environment, infrastructure, community facilities or local character and amenity.

The application is subsequently recommended for approval, subject to conditions.

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## RECOMMENDATION

It is recommended that application number DA21/0675 for Alterations and additions to existing café and proposed neighbourhood shop extension be approved, subject to the following conditions:-

It is recommended that application number DA21/0675 to modify Development Consent for Alterations and additions to existing café and proposed neighbourhood shop extension be approved subject to the following conditions:-

It is recommended that application number DA21/0675 for Alterations and additions to existing café and proposed neighbourhood shop extension be refused for the following reasons:-

It is recommended that DA21/0675 to modify Development Consent for Alterations and additions to existing café and proposed neighbourhood shop extension be refused for the following reasons:-

## CONDITIONS OF CONSENT FOR APPLICATION NO.

Right click & select OR delete if NO deferred commencement consents

### A. SCHEDULE A – Reasons for Conditions

The conditions of this consent have been imposed for the following reasons:

- A.1 To ensure compliance with the terms of the Environmental Planning and Assessment Act 1979 and Regulation 2000.
- A.2 Having regard to Council's duties of consideration under Section 4.15 and 4.17 of the Act.

- A.3 To ensure an appropriate level of provision of amenities and services occurs within the City and to occupants of sites.
- A.4 To improve the amenity, safety and environmental quality of the locality.
- A.5 Having regard to environmental quality, the circumstances of the case and the public interest.
- A.6 Having regard to the Wagga Wagga Development Control Plan 2010.
- A.7 To help retain and enhance streetscape quality.
- A.8 Ensure compatibility with adjoining and neighbouring land uses and built form.
- A.9 To protect public interest, the environment and existing amenity of the locality.
- A.10 To minimise health risk to neighbouring residents and workers.

## B. SCHEDULE B – Deferred Commencement Conditions

N/A

## C. SCHEDULE C – Conditions

### Approved Plans and Documentation

- C.1 The development must be carried out in accordance with the approved plans and specifications as follows.

Plan/DocNo.	Plan/Doc Title	Prepared by	Issue	Date
	Statement of Environmental Effects	NGH Consulting		13.10.2021
	Response to Submission	NGH Consulting		2 May 2022
00	Cover Sheet	Sewell Design Pty Ltd	J	21.03.2021
01	Site Plan	Sewell Design Pty Ltd	J	21.03.2021
02	Existing Floor Plan	Sewell Design Pty Ltd	J	21.03.2021
03	Proposed Floor Plan	Sewell Design Pty Ltd	J	21.03.2021
04	Elevations	Sewell Design Pty Ltd	J	21.03.2021
05	Typical section, Shadow Diagrams & Artists Impressions	Sewell Design Pty Ltd	J	21.03.2021
06	Artists Impressions	Sewell Design Pty Ltd	J	21.03.2021
07	Artists Impressions	Sewell Design Pty Ltd	J	21.03.2021
08	Artists Impressions	Sewell Design Pty Ltd	J	21.03.2021

The Development Application has been determined by the granting of consent subject to and as amended by the conditions of development consent specified below.

NOTE: Any modifications to the proposal shall be the subject of an application under Section 4.55 of the Environmental Planning and Assessment Act, 1979.

### **Requirements before a Construction Certificate can be issued**

C.2 Prior to the issue of the Construction Certificate, sufficient information must be forwarded to the certifying authority illustrating compliance with the relevant requirements of the Building Code of Australia.

- a) Pursuant to Clause 98 of the Environmental Planning and Assessment Regulation 2000, the proposed building work must comply with the Building Code of Australia (BCA), including but not limiting to:
  - i) Structure - Section B- (Part B1)
  - ii) Fire Resistance - Section C- (Parts C1, C2, C3)
  - iii) Access and Egress - Section D- (Parts D1, D2, D3)
  - iv) Services and Equipment - Section E- (Parts E1, E2, E3, E4)
  - v) Health and Amenity - Section F- (Parts F1, F2, F3, F4, F5)
  - vi) Ancillary Provisions- Section G- (Parts G1, G2, G3, G4, G5)
  - vii) Special Use Buildings- Section H- (Parts H1, H2, H3)
  - viii) Energy Efficiency- Section J- (Parts J0, J1, J2, J3, J5, J6, J7, J8)

C.3 Prior to the issue of Construction Certificate the applicant must lodge a bond with Council of:-

\$2000 for security deposit on the kerb and gutter and footpath

Plus a non-refundable administration fee as per Council's Fees and Charges.

NOTE 1: Applicants will be required to contact Council PRIOR to making the payment to arrange a bond (BKG) number. This must be done prior to making payment at Council's customer service desk.

NOTE 2: In lieu of payment, the applicant can with written authorisation from their builder, utilise an ongoing bond should their builder hold an ongoing bond.

NOTE 3: All monetary conditions are reviewed annually, and may change on 1 July each year.

NOTE 4: Works in the form of driveways, kerb and gutter and footpath may require you to obtain a Section 138 Roads Act 1993 approval. Please contact Council's Road Reserve Officer on 1300 292 442 prior to undertaking such works.

NOTE 5: Council will accept a once off security deposit for the kerb and gutter and footpath for applicants who lodge multiple DA's with council. If the applicant has security deposits held by Council for kerb and gutter and

footpath at the time of Construction Certificate application, then Council may waive the need for an additional bond to be paid.

NOTE 6: The bond held on the kerb and gutter and footpath is fully refundable upon completion of all works and upon inspection by Council to ensure that any damage to Council infrastructure has been repaired. The bond will not be refunded in the event that damage done to Council's infrastructure is not repaired to the satisfaction of Council. All damage is to be repaired at the full cost of the applicant

C.4 Pursuant to s7.12 of the Environmental Planning and Assessment Act 1979 and the Wagga Wagga Local Infrastructure Contributions Plan 2019-2034, a monetary contribution of \$5,150 must be paid to Council, prior to the issuing of the Construction Certificate. The monetary contribution payable under this condition will be indexed in accordance with Clause 3.2 of the Wagga Wagga Local Infrastructure Contributions Plan 2019-2034 from the endorsed date of this Development Consent until the date of payment.

NOTE 1: Clause 3.2 of the Wagga Wagga Local Infrastructure Contributions Plan 2019-2034 provides for Section 7.12 contributions to be indexed in accordance with annual movements in the March quarter Consumer Price Index (CPI) (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

NOTE 2: The monetary contribution identified above remains applicable if paid within the same financial year as the date of determination. If payment is to be made outside this period, you are advised to contact Council prior to payment being made to determine if CPI increases/decreases have occurred since the date of this consent. The applicable rate of CPI at the time of consent is 118.5.

NOTE 3: A copy of the Wagga Wagga Local Infrastructure Contributions Plan 2019-2034, is available for inspection at Council Chambers, corner Baylis and Morrow Streets, Wagga Wagga, or on Council's website.

C.5 Prior to the release of Construction Certificate a compliance certificate under s306 of the Water Management Act 2000 must be obtained in respect of the development relating to water management works that may be required in connection with the development.

NOTE1: 'Water management work' is defined in s283 of the Water Management Act to mean a 'water supply work', 'drainage work', 'sewage work' or 'flood work'. These terms are defined in that Act.

NOTE 2: Riverina Water is responsible for issuing compliance certificates and imposing requirements relating to water supply works for development in the Council's area. An application for a compliance certificate must be made with Riverina Water. Additional fees and charges may be incurred by the proposed development - please contact Riverina Water to ascertain compliance certificate water supply related requirements. A copy of such a compliance certificate is required prior to release of Construction Certificate.

- NOTE 3: The Council is responsible for issuing compliance certificates and imposing requirements relating to sewerage, drainage and flood works for development in its area.
- NOTE 4: Under s306 of the Water Management Act 2000, Riverina Water or the Council, as the case requires, may, as a precondition to the issuing of a compliance certificate, impose a requirement that a payment is made or works are carried out, or both, towards the provision of water supply, sewerage, drainage or flood works.
- NOTE 5: The Section 64 Sewer base figure is \$1,822.
- The Section 64 Sewer contribution (updated by the 118/100.5) required to be paid is \$2,139.
- NOTE 6: The Section 64 Stormwater base figure is \$357.
- The Section 64 Stormwater contribution (updated by the 118/87.9) required to be paid is \$479.
- NOTE 7: Section 64 contributions shall be indexed in accordance with CPI annually at the commencement of the financial year.
- NOTE 8: The figures outlined in this consent are based on the current rate of CPI. Please be advised that CPI changes on a regular basis and you are advised to contact Council prior to payments being made, to ensure no further CPI increases/decreases have occurred since the date of this consent.
- C.6 Prior to the issue of a Construction Certificate an amended plan illustrating the location of mechanical venting for the bathroom facilities shall be submitted to Council for approval. Venting shall be located to ensure that any noise and odour is directed away from the adjoining dwelling to the east to the satisfaction of the General Manager of their delegate.
- C.7 Prior to the issue of a Construction Certificate an amended site plan identifying the entirety of the site and showing seating to all outdoor dining areas shall be submitted to Council for approval by the General Manager or their delegate. Seating is to be limited to 20 seats within the rear yard area.
- C.8 No approval is granted for the black colour proposed for the external cladding for the addition. Prior to the issue of a Construction Certificate revised colours to be used for the addition must be submitted to Council.
- C.9 Prior to the release of the Construction Certificate, revised plans shall be provided indicating:
- A handwash basin in coffee preparation area;
  - Handwash basin in the kitchen area; and
  - Cleaners sink.



- C.10 Prior to issue of the Construction Certificate detailed plans and elevations of the food and drink preparation areas shall be submitted in accordance with the requirements of the Food Act 2003 and the Food Regulation 2015 and the Food Safety Standards Code. Plans shall include but not be limited to the floor, wall, ceiling covering, coving, exhaust canopy, personal and chemical storage areas.

### **Requirements before the commencement of any works**

- C.11 If the work involved in the erection or demolition of a building or structure:

- a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
- b) building involves the enclosure of a public place,

a hoarding or fence must be erected between the development site/works and the public place prior to works commencing on site.

All construction materials, waste, waste skips, machinery and contractors vehicles must be located and stored or parked within the site. No storage of materials, parking of construction machinery or contractor's vehicles will be permitted within the public space.

If necessary, an awning must be erected, sufficient to prevent any substance, from or in connection with the work, falling into the public place. Further the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

NOTE 1: Any such hoarding, fence or awning must be removed when the work has been completed.

NOTE 2: Any external lighting required by this condition must be designed and positioned so that, at no time, will any light be cast upon any adjoining property.

NOTE 3: Prior to any hoarding being erected, the applicant must ensure that an application for a Hoarding Permit is submitted to and approved by Council.

- C.12 Prior to works commencing on site, toilet facilities must be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:
- a) a standard flushing toilet connected to a public sewer, or
  - b) if that is not practicable, an accredited sewage management facility approved by Council, or
  - c) if that is not practicable, any other sewage management facility approved by Council.

- NOTE 1: The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced and the toilet facility must not be removed without the prior written approval of Council.
- NOTE 2: "Vicinity" in this condition is defined to mean within 50 metres of the subject building site.
- NOTE 3: The toilet facilities are to comply with all WORK COVER NSW requirements.

C.13 A CONSTRUCTION CERTIFICATE must be obtained pursuant to Section 6.7 of the Environmental Planning and Assessment Act 1979, as amended from either Council or an accredited certifying authority certifying that the proposed works are in accordance with the Building Code of Australia PRIOR to any works commencing.

- NOTE 1: No building, engineering, excavation work or food premises fitout must be carried out in relation to this development until the necessary Construction Certificate has been obtained.
- NOTE 2: YOU MUST NOT COMMENCE WORK UNTIL YOU HAVE RECEIVED THE CONSTRUCTION CERTIFICATE, even if you made an application for a Construction Certificate at the same time as you lodged this Development Application.
- NOTE 3: It is the responsibility of the applicant to ensure that the development complies with the provision of the Building Code of Australia in the case of building work and the applicable Council Engineering Standards in the case of subdivision works. This may entail alterations to the proposal so that it complies with these standards.

C.14 Prior to works commencing a container must be erected on site for the enclosure of all building rubbish and debris, including that which can be wind blown. The enclosure shall be approved by Council and be retained on site at all times prior to the disposal of rubbish at a licenced Waste Management Centre.

Materials and sheds or machinery to be used in association with the construction of the building must not be stored or stacked on Council's footpath, nature strip, reserve or roadway.

- NOTE 1: No building rubbish or debris must be placed, or be permitted to be placed on any adjoining public reserve, footway, road or private land.
- NOTE 2: Weighbridge certificates, receipts or dockets that clearly identify where waste has been deposited must be retained. Documentation must include quantities and nature of the waste. This documentation must be provided to Council prior to application for an Occupation Certificate for the development.

NOTE 3: The suitable container for the storage of rubbish must be retained on site until an Occupation Certificate is issued for the development.

C.15 Prior to the commencement of works erosion and sediment control measures are to be established and maintained to prevent silt and sediment escaping the site or producing erosion. This work must be carried out and maintained in accordance with Council's:-

- a) Development Control Plan 2010 (Section 2.6 and Appendix 2)
- b) Erosion and Sediment Control Guidelines for Building Sites; and
- c) Soils and Construction Volume 1, Managing Urban Stormwater

Prior to commencement of works, a plan illustrating these measures shall be submitted to, and approved by, Council.

NOTE: All erosion and sediment control measures must be in place prior to earthworks commencing.

C.16 Prior to works commencing on site:

- i) Council must be notified of any damage to kerb and gutter and footpath fronting the site. The absence of such notification shall indicate that no damage exists and the applicant shall be responsible for the repair of any damage to kerb and gutter or footpath fronting the site.
- ii) Satisfactory protection for existing public infrastructure must be provided and maintained throughout the construction period.

C.17 A Section 68 Approval must be obtained by a Licensed Plumber and Drainer prior to any sewer or stormwater work being carried out on the site. Plans must be supplied for assessment and approval as part of the s68 application and must indicate that pipe and pit sizing meets the requirements of AS3500 and the Plumbing Code of Australia.

Further, a final inspection must be carried out upon completion of plumbing and drainage work prior to occupation of the development.

The licensed plumber must submit to Council, at least two (2) days prior to the commencement of any plumbing and drainage works on site a "Notice of Works".

NOTE: A copy of the Notice of Works form can be found on Council's website.

### **Requirements during construction or site works**

C.18 If an excavation associated with the erection/demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- a) must preserve and protect the building from damage, and

- b) if necessary, must underpin and support the building in an approved method, and
- c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the building being erected/demolished.

NOTE 1: The owner of the adjoining allotment of land is not liable for any part of the cost of the work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

NOTE 2: For the purposes of this condition allotment of land includes a public road or any other public place.

C.19 The Builder must at all times maintain, on the job, a legible copy of the plans and specifications approved with the Construction Certificate.

C.20 All excavation and backfilling associated with the erection/demolition of the building must be properly guarded and protected to prevent them from being dangerous to life or property.

C.21 The demolition must be carried out in accordance with the provisions of Australian Standard AS2601-2001: The Demolition of Structures.

Within fourteen (14) days of completion of demolition, the following information shall be submitted to Council for assessment and approval:

- a) an asbestos clearance certificate prepared by a competent person; and
- b) a signed statement verifying that demolition work and the recycling of materials was undertaken in accordance with any Waste Management Plan approved with this consent. In reviewing such documentation Council will require the provision of actual weighbridge receipts for the recycling/disposal of all materials.

NOTE 1: Developers are reminded that WorkCover requires that all plant and equipment used in demolition work must comply with the relevant Australian Standards and manufacturer specifications.

NOTE 2: Demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence".

NOTE 3: Competent Person (as defined under Safe Removal of asbestos 2nd Edition [NOHSC: 2002 (2005)]) means a person possessing adequate qualifications, such as suitable training and sufficient knowledge, experience and skill, for the safe performance of the specific work.

NOTE 4: A licence may be required for some of the tasks described in the document entitled Safe Removal of Asbestos 2nd Edition as requiring a competent person.

- C.22 The permitted construction hours are Monday to Friday 7.00am to 6.00pm and Saturday 7.00am to 5.00pm, excepting public holidays. All reasonable steps must be taken to minimise dust generation during the demolition and/or construction process. Demolition and construction noise is to be managed in accordance with the Office of Environment and Heritage Guidelines.
- C.23 All roofed and paved areas of the proposed additions must be drained to the existing roofwater drainage system, in accordance with AS/NZS 3500.3.2003 'Stormwater Drainage'.
- C.24 All earthworks, filling, building, driveways or other works, must be designed and constructed (including stormwater drainage if necessary) so that at no time, will any ponding of stormwater occur on adjoining land as a result of this development.
- C.25 The developer is to maintain all adjoining public roads to the site in a clean and tidy state, free of excavated "spoil" material.
- C.26 The construction and finished area used for the manufacture, preparation, storage, packing, carriage or delivery of food for sale shall be constructed and maintained in accordance with the Food Act 2003 and Food Regulations 2015 and the Food Safety Standards Code.

### **Requirements before a Subdivision Certificate can be issued**

#### **Requirements prior to issue of an Occupation Certificate or prior to operation**

- C.27 Prior to the issue of Occupation Certificate, the paving of all vehicular movement areas must be either a minimum of 150mm thick flexible pavement and sealed or 150mm thick reinforced concrete.
- C.28 Prior to the issue of the Occupation Certificate and at a minimum two (2) days prior to the food business premises commencing trade, a health inspection must be conducted by Council's Environmental Health Officer in accordance with the Food Act 2003 and the Food Regulations 2015, Food Safety Standards Code. A satisfactory final fit out and construction approval must be obtained by Council's Environmental Health Officer prior to commencing trade.
- C.29 An Occupation Certificate, must be obtained pursuant to Section 6.9 of the Environmental Planning and Assessment Act 1979, from either Council or an accredited certifying authority, prior to occupation of the building.

In order to obtain this, the "Final Occupation Certificate" form must be completed and submitted to Council with all required attachments - failure to submit the completed Occupation Certificate Application form will result in an inability for Council to book and subsequently undertake Occupation Certificate inspection.

NOTE: The issuing of an Occupation Certificate does not necessarily indicate that all conditions of development consent have been complied with.

The applicant is responsible for ensuring that all conditions of development consent are complied with.

- C.30 A final inspection must be carried out upon completion of plumbing and drainage work and prior to occupation of the development, prior to the issuing of a final plumbing certificate Council must be in possession of Notice of Works, Certificate of Compliance and Works as Executed Diagrams for the works. The works as Executed Diagram must be submitted in electronic format in either AutoCAD or PDF file in accordance with Council requirements.

All plumbing and drainage work must be carried out by a licensed plumber and drainer and to the requirements of the Plumbing and Drainage Act 2011.

NOTE: Additional fees for inspections at the Plumbing Interim Occupancy / Plumbing Occupation stage may apply. This will depend on the number of inspections completed at this stage of the work/s.

### **General requirements**

- C.31 The approved hours of operation subject to DA20/0584, being 6:30am to 5:30pm Monday to Friday and 6:30am to 4pm Saturday, Sunday and public holidays shall remain. Any alterations to the approved hours of operation will require consent from Council.
- C.32 The area identified for use as a Neighbourhood Shop must be used for this purpose only. No seating for the café shall be located within this area at any time.
- C.33 The breezeway must be used for access to the café, deck and neighbourhood shop only. No café seating shall be located in this area at any time.
- C.34 No amplified or acoustic music is permitted within the outdoor dining areas including the covered deck area.
- C.35 The owner must submit to Council and the NSW Fire Brigade an Annual Fire Safety Statement, each 12 months, commencing within 12 months after the date on which the initial Interim/Final Fire Safety Certificate is issued or the use commencing, whichever is earlier.

## **D. SCHEDULE D – Activity Approval Conditions (Section 68)**

- D.1 " Delete entire row and add N/A if no conditions are added"

## **E. SCHEDULE E – Prescribed Conditions**

Conditions under this schedule are prescribed conditions for the purposes of section 4.17 (11) of the Environmental Planning and assessment Act 1979.

- E.1 Fulfilment of BASIX commitments (clause 97A EP&A Reg 2000)



The commitments listed in any relevant BASIX Certificate for this development must be fulfilled in accordance with the BASIX Certificate Report, Development Consent and the approved plans and specifications.

**E.2 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989 (clause 98 EP&A Reg 2000)**

- (1) For development that involves any building work, the work must be carried out in accordance with the requirements of the Building Code of Australia.
- (2) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract of insurance shall be in force before any building work authorised to be carried out by the consent commences.
- (3) For a temporary structure that is used as an entertainment venue, the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the Building Code of Australia.

**NOTE 1:** This condition does not apply:

- (a) to the extent to which an exemption is in force under clause 187 or 188 of the Environmental Planning and Assessment Regulation 2000 (the Regulation), subject to the terms of any condition or requirement referred to in clause 187(6) or 188(4) of the Regulation, or
- (b) to the erection of a temporary building, other than a temporary structure to which part (3) of this condition applies.

**NOTE 2:** In this condition, a reference to the Building Code of Australia is a reference to that Code as in force on the date the application is made for the relevant:

- (a) development consent, in the case of a temporary structure that is an entertainment venue, or
- (b) construction certificate, in every other case.

**NOTE 3:** There are no relevant provisions in the Building Code of Australia in respect of temporary structures that are not entertainment venues.

**E.3 Erection of signs (clause 98A EP&A Reg 2000)**

For development that involves any building work, subdivision work or demolition work, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

NOTE 1: This condition does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

NOTE 2: This condition does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Environmental Planning and Assessment Act 1979, to comply with the technical provisions of the State's building laws.

NOTE 3: Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained.

#### E.4 Notification of Home Building Act 1989 requirements (clause 98B EP&A Reg 2000)

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (a) in the case of work for which a principal contractor is required to be appointed:
  - i) the name and licence number of the principal contractor, and
  - ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- (b) in the case of work to be done by an owner-builder:
  - i) the name of the owner-builder, and
  - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under this condition becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

NOTE: This condition does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Environmental Planning and Assessment Act 1979, to comply with the technical provisions of the State's building laws.

#### E.5 Entertainment venues (clause 98C EP&A Reg 2000)

If the development involves the use of a building as an entertainment venue, the development shall comply with the requirements set out in Schedule 3A of the Environmental Planning and Assessment regulation 2000.

#### E.6 Maximum capacity signage (clause 98D EP&A Reg 2000)

For the following uses of a building: a sign must be displayed in a prominent position in the building stating the maximum number of persons permitted in the building if the development consent for the use contains a condition specifying the maximum number of persons permitted in the building:

- (a) entertainment venue,
- (b) function centre,
- (c) pub,
- (d) registered club,
- (e) restaurant.

NOTE: Words and expressions used in this condition have the same meanings as they have in the Standard Instrument.

E.7 Shoring and adequacy of adjoining property (clause 98E EP&A Reg 2000)

If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (a) protect and support the building, structure or work from possible damage from the excavation, and
- (b) where necessary, underpin the building, structure or work to prevent any such damage.

NOTE: This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

E.8 " Delete entire row and add N/A if no conditions are added"

**F. SCHEDULE F – General Terms of Approval (Integrated Development)**

F.1 " Delete entire row and add N/A if no conditions are added"

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