



# **AGENDA FOR EXTRA ORDINARY COUNCIL MEETING**

**7<sup>th</sup> July 2020**

**NOTICE IS HEREBY GIVEN** pursuant to clause 7 of Council's Code of Meeting Practice that an Extra Ordinary Council Meeting of Walgett Shire Council will be held at the **Council Chamber, Walgett on the 7<sup>th</sup> July 2020 at 8.30am** to discuss the items listed in the Agenda in respect of Council considering the modification to the Development Application for the Walgett Aboriginal Medical Services new medical additions in Wee Waa Street, Walgett.

Michael Urquhart  
**ACTING GENERAL MANAGER**

## CONFLICT OF INTERESTS

**What is a "Conflict of Interests"** – A conflict of interests can be two types:

**Pecuniary** – an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

**Non-Pecuniary** – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature.)

### **Remoteness**

A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

**Who has a Pecuniary Interest?** – A person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- The person, or
- Another person with whom the person is associated (see below)

### **Relatives, Partners**

A person is taken to have a pecuniary interest in a matter if:

- The person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter

N.B. "Relative", in relation to a person means any of the following:

- (a) The parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse.
- (b) The spouse or de facto partners of the person or of a person referred to in paragraph (a)

### **No Interest in the Matter**

However, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company of other body, or
- Just because the person is a member of, or is employed by, the Council
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

### **Disclosure and participation in meetings**

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
  - (a) At any time during which the matter is being considered or discussed by the Council or Committee, or
  - (b) At any time during which the Council or Committee is voting on any question in relation to the matter.

**No Knowledge** – A person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

**Non-Pecuniary Interest** – Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-Pecuniary conflicts of interest must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

### **Disclosure to be Recorded (S453 Act)**

A disclosure (and the reason/s for the disclosure) made at a meeting of the Council or Council Committee or Sub-Committee must be recorded in the minutes of the meeting.

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## Local Government Act 1993

### Chapter 3 section 8A

#### GUIDING PRINCIPLES FOR COUNCILS

##### (1) **Exercise of functions generally**

The following general principles apply to the exercise of functions by councils:

- (a) Councils should provide strong and effective representation, leadership, planning and decision-making.
- (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Councils should work with others to secure appropriate services for local community needs.
- (h) Councils should act fairly, ethically and without bias in the interests of the local community.
- (i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

##### (2) **Decision-making**

The following principles apply to decision-making by councils (subject to any other applicable law):

- (a) Councils should recognise diverse local community needs and interests.
- (b) Councils should consider social justice principles.
- (c) Councils should consider the long term and cumulative effects of actions on future generations.
- (d) Councils should consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

##### (3) **Community participation**

Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures

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## 1. OPENING OF MEETING

Time: \_\_\_\_\_am

## 2. ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

*I would like to acknowledge the traditional owners of the lands within the Walgett Shire and I would also like to acknowledge the Aboriginal and Torres Strait Islander people who now reside within this Shire.*

## 3. LEAVE OF ABSENCE

### Leave of Absence

#### Recommendation:

That the leave of absence received from \_\_\_\_\_are accepted and leave of absence granted.

**Moved:** Clr

**Seconded:** Clr

#### **4. DECLARATION OF PECUNIARY/NON PECUNIARY INTERESTS**

*Councillors and senior staff are reminded of their obligation to declare their interest in any matters listed before them.*

*In considering your interest you are reminded to include pecuniary, non-pecuniary and conflicts of interest as well as any other interest you perceive or may be perceived of you.*

*Councillors may declare an interest at the commencement of the meeting, or alternatively at any time during the meeting should any issue progress or arise that would warrant a declaration.*

*Councillors must state their reasons in declaring any type of interest.*

| Councillor | Item No. | Pecuniary/Non-Pecuniary | Reason |
|------------|----------|-------------------------|--------|
|            |          |                         |        |
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|            |          |                         |        |
|            |          |                         |        |

## 5. REPORTS FROM OFFICERS

### 5.1 DIRECTOR OF ENVIRONMENTAL SERVICES

#### 5.1.1 DEVELOPMENT APPLICATION 2020/004 – SUBDIVISION – WALGETT ABORIGINAL MEDICAL SERVICE AMENDMENT

**REPORTING SECTION:** Environmental Services  
**AUTHOR:** Contract Town Planner, Libby Cumming  
**FILE NUMBER:** DA2020/004

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##### **Summary:**

This report considers the merits of a proposed amendment under Section 4.55 of the *Environmental Planning & Assessment Act 1979* to Development Application 2020/4. Consent was given on 12 June 2020 under delegated authority for a two lot residential subdivision, located at Pitt Street Walgett on Lot 1 DP 1256009.

The amendment is to make the application a staged application with Condition 7 being delayed for a 5 year period. As the modification is for a variation of Council policy contained within the Walgett Development Control Plan (WDCP), determination by an Ordinary Meeting of Council is required.

##### **Background:**

A development application was approved on 12 June 2020 under delegated authority for a two lot residential subdivision, located at Pitt Street Walgett on Lot 1 DP 1256009.

A copy of the approved Statement of Environmental Effects which includes the proposed plan of subdivision and the development assessment report has been attached to this report.

This is permissible development under the *Walgett Local Environmental Plan 2013* and is compliant with the controls in the *Walgett Development Control Plan 2016* (WDCP) with the application of the relevant development consent conditions.

A modification request was submitted requesting that the application become a staged application, in that Condition 7 be delayed for a period of 5 years. The full modification request is attached to this report.

##### *Condition 7*

##### *Prior to Subdivision Commencing*

*Kerb and guttering is to be constructed along the Dundas Street frontage at the developers cost. The new kerb and gutter is to be constructed to meet the profile of the existing kerb and gutter and shall be bitumen sealed from the edge of the bitumen to the kerb and guttering to a standard approved by Council's Director of Engineering. Full construction is required of the road edge from the back face of the kerb for a distance of a minimum of 2.2m towards the centre of Dundas Street.*

This condition ensures that the subdivision is compliant with the controls within the WDCP and provides the minimum requirement for development. As stated in the modification request:

*Walgett Aboriginal Medical Service (WAMS) is seeking to have this condition amended to allow the work to be staged for completion over a five year period. The intention of WAMS is to submit a further request to amend the DA (a 4.55 application) at a later date to have this condition waived all together. The reason for requesting the staging at this time (and*

*submitting the second request later) is to allow for the application to be processed more quickly as time is now critical on the completion of this project.*

The basis for this request was stated as being:

*WAMS is a community-based Aboriginal medical service providing health services to the community and larger Shire population. This is an essential health service for the community and the diversion of funds towards kerb, guttering and road pavement is believed to be inappropriate.*

*The current road design has been unchanged since the development of the clinic building in 1989, without any negative impact on amenity.*

*The removal of this condition is therefore to the benefit of the community without any detriment.*

*The reason that this modification has been submitted rather than the modification to remove the condition all together has been due to timing of the opening of the building.*

*The program for completion of the new building allows occupation in approximately three months. Constructive Dialogue and WAMS have been working with Council and relevant professionals to establish the new electricity feed for approximately one year (since the approval of the initial DA). As this has been a protracted process, we are now in a position whereby any delay will result in a delay in the new building being operational. Due to the proximity of Christmas, we recognise that any delay can shift the opening from October to February and thereby delay the provision of health service to the local and wider aboriginal community. This is particularly relevant at the current time when everyone is acutely aware of the need for health services to be operational.*

Any modification to remove Condition 7 would require full notification and presentation to Council for consideration, whereas this modification is not changing the development consent condition, rather delaying only 1 component. Therefore notification is not required, and consideration by Council can be expedited, thus enabling the commencement of the electrical provision, enabling the proposed October opening timeframe.

This land title has recently changed as part of a requirement under DA2019/007 being the construction of the Walgett Aboriginal Medical Service (WAMS). Consolidation was a requirement under the issued development consent as the buildings were to be positioned over the boundary lines of three lots. The modification request states that:

In retrospect, WAMS became aware that the consolidation of the properties would result in significant costs (approximately \$25,000) associated with the consolidation requiring a single electricity supply to the new land title.

The second Development Application was submitted in order to reinstate the separate titles, keeping the current clinic building and the new shopfront development on different titles and thus allowing the current electricity feed to the clinic building to remain untouched.

Condition 7 (quoted above) is imposing a financial burden on WAMS of approximately \$100,000 that WAMS would rather spend on service provision.

Council's Director of Engineering/Technical Services has costed the work required to be completed as per Condition 7, with it totalling \$52,000.00.

**There are two options Council should review when considering this requested modification:**

**a. Reject the Modification Request Outright**

Council can choose to refuse the modification request. This would result in a development that is:

- A development that is fully compliant in regards to:



- Infrastructure service provision, including, water, sewer, stormwater, kerb and gutter, and access.
- the development controls/policy as per the WDCP
- No precedent being set for future land development with substandard infrastructure provision.
- A quality developed precinct around WAMS, which has full infrastructure provision.

**b. Accept Modification as Requested**

Council can choose to accept the modification by allowing the staging, in that Condition 7 will be undertaken in 5 years' time. This would result in:

- Set the precedent that new land title can be created that does not have the minimum infrastructure provision as per the WDCP.
- Dundas Street will continue to deteriorate.
- The longer the work is left the more expensive the work will be to undertake.
- Council accepting the risk that the work may never be completed.

If the work **IS** undertaken and completed within 5 years there will be no issue, accept that the cost of the work will be higher.

If the work is **NOT** undertaken, the question for Council to consider is how Council can ensure the work is completed. There are several options:

- **Require a bond from WAMS with the value being the current cost of the works with a projected CPI component and use that to fund the works.**
- **Require a bank guarantee from WAMS to with the value being the current cost of the works with a projected CPI component and use that to fund the works.**
- **The Council on behalf of the community fund the work as part of its normal street renewal program. Council has no plans for the future repair or renewal of Dundas Street.**
- **Council consider:**
  - **putting a percentage of funds towards, or**
  - **footing the full cost of the works**

Based on the positive social outcome WAMS will bring to the Walgett and outlying community as a whole.

**Risks**

The risks Council needs to consider in making a decision regarding this development are:

a) Developer Imposition

The developer has indicated that the extra cost of the roads works upgrade, combined with the unforeseen electrical provision cost will put an unbudgeted cost on the WAMS development. The funds could be utilised elsewhere by providing additional services.

Normally the developer pays for all works required, and not the community, but in this instance, the development has great community benefit compared to the economic benefit.

a) Precedent

If a development is allowed to proceed that does not comply with Council's Policy/WDCP for the minimum standard of infrastructure provision, this will lead to the setting of a precedent for future requests.

At some point, Council needs to draw a line in the sand as to what it will and will not accept as a minimum standard of development. The current minimum is that any new development/lot created has full infrastructure service provision of water, sewer, stormwater and access. This includes kerb and gutter and roadworks. This is normally

required due to the intensification of use on the site. If not addressed, precedent leads to a legacy of substandard development that Council will have to address in the future.

b) **Community Cost**

Should Council consider either delaying or waiving all together Condition 7, the cost to the community needs to be considered.

If the work was delayed, Council runs the risk that the work may not be completed and it will have to either find a legal way to ensure that either WAMS pay the cost of the work in 5 years' time, or Council pays for the upgrading work which is a cost burden to the community.

Council may consider in this instance that the WAMS development will have a greater social benefit to the Walgett and outlying community that outweighs the financial costs of the works involved, and therefore the community through Council should either pay for or contribute to the upgrading works in Dundas Street.

Council has two roles to consider in this issue. On one hand it is the Approval Authority and the other it is the Community Service Provider of infrastructure. Both are quite distinct and should not be blurred in this matter.

If Council chooses to fund either partially or in full the works, the modification should be approved as requested, being staged with Condition 7 being completed within 5 years, with Council's role being the **Approval Authority**. It can either have or not have additional conditions as to ensure the completion of the work within this timeframe.

Council in its roles as a **Community Service Provider** then undertakes an Memorandum of Understanding with WAMS as to the funding and time of the works outlining the community and WAMS contribution.

**Current position:**

The development consent requires that road works including kerb and guttering be undertaken in Dundas Street prior to the subdivision being completed. This will be an added financial burden to WAMS and will delay the opening of the service from October 2020 until February 2021.

Yet by completing the roadworks, a quality development will be provided, completing the existing precinct around WAMS, with all minimum infrastructure standards being met. It also sets a minimum standard for future development/redevelopment within Walgett, and negates the risk of precedent setting of substandard development within Walgett.

**Relevant reference documents/policies:**

*Walgett Development Control Plan 2016*

**Governance issues:**

*Environmental Planning & Assessment Act 1979*

*Walgett Local Environmental Plan 2013*

*Local Government Act 1993*

**Environmental issues:**

Nil

**Stakeholders:**

Walgett Shire Council, Community, and Developers

Walgett Aboriginal Medical Services

**Financial Implications:**

Nil if Council chooses to do nothing, but accepts a bond or bank guarantee with the value being the current cost of the works with a projected CPI component and use that to fund the works.

Council may choose to offer a percentage of funds towards or foot the full cost of the works based on the positive social outcome WAMS will bring to the Walgett and outlying community as a whole. As recommended below, a contribution of 50% of the total cost of the works may be deemed appropriate and would need to be considered in the overall budget of Council.

**Alternative solutions/options:**

- Refuse the modification application as submitted.
- Approve the modification without any additional conditions of development consent.
- Approve the modification by making a commitment to fund either a percentage or fully the required works as per Condition 7 of the development consent.

**Development Application 2020/004 – Subdivision– Walgett Aboriginal Medical Service Amendment****Recommendation:**

That Walgett Shire Council resolve to:

a) Modify Development Application 2020/004 Condition 7 to read:

*Condition 7*

Kerb and guttering is to be constructed along the Dundas Street frontage at the developers cost. The new kerb and gutter is to be constructed to meet the profile of the existing kerb and gutter and shall be bitumen sealed from the edge of the bitumen to the kerb and guttering to a standard approved by Council's Director of Engineering. Full construction is required of the road edge from the back face of the kerb for a distance of a minimum of 2.2m towards the centre of Dundas Street. This is to be completed as Stage 2 of the development.

b) Include the following condition.

*Condition 7a*

Council undertake a Memorandum of Understanding with the Walgett Aboriginal Medical Service that it will contribute to the Stage 2 of the development, being the road works in Dundas Street to the value of 50% of the work at a total cost of \$52,000, Council cost being \$26,000, with a projected CPI component, within 5 years of the date of development approval

**Moved: Clr**

**Seconded: Clr**

**Attachments (Refer to Attachments Document) :**

Stamped Statement of Environmental Effects  
Development Assessment – DA2020/004  
Modification Request.

## 9. CLOSE OF MEETING

**Time: .....**