



AGENDA FOR THE EXTRA ORDINARY COUNCIL MEETING

10 AUGUST 2020

NOTICE IS HEREBY GIVEN pursuant to clause 7 of Council's Code of Meeting Practice that a Special Council Meeting of Walgett Shire Council will be held at the **Council Chamber, Walgett** on **10TH August 2020** commencing at **9.00 am** to discuss the items listed in the Agenda.

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                                                                           |            |
|--------------------------------------------------------------------------------------------|------------|
| <b>Recommendation:</b>                                                                     |            |
| That the leave of absence received from _____ are accepted and a leave of absence granted. |            |
| <b>Moved:</b>                                                                              | <b>Clr</b> |
| <b>Seconded:</b>                                                                           | <b>Clr</b> |

#### **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 IGA Development Application Modification

|                           |                                                                                                                                                                                          |
|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>REPORTING SECTION:</b> | Planning                                                                                                                                                                                 |
| <b>AUTHOR:</b>            | Libby Cumming, Contract Town Planner                                                                                                                                                     |
| <b>FILE NUMBER:</b>       | DA2020/001-2                                                                                                                                                                             |
| <b>TITLE:</b>             | Development Application Modification – IGA Supermarket, 34-38 Fox Street, Walgett                                                                                                        |
| <b>ATTACHMENT:</b>        | Original Development Consent & Assessment<br>Modification Application & Site Plan<br>NSW Police & Transport for NSW Concurrence<br>Modification Assessment including Engineering Comment |

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#### Summary:

This report is to consider a modification under Section 4.55 of the *Environmental Planning & Assessment Act 1979*. The requested modification contains the following components:

1. Removal of DA Condition 6 regarding stormwater disposal upgrade carpark.
2. Removal of DA Condition 10 regarding the use of roller shutters.
3. Removal of DA Condition 25 regarding fencing and gates.
4. Relocation of Existing Bin Refuse to be adjacent the Loading Dock Entrance
5. DA Condition 7 regarding Footpath Design to be able to be completed/approved at Occupation Certificate Stage rather than Construction Certificate Stage.

#### Background:

The purpose of this report is to consider a modification under Section 4.55 of the *Environmental Planning & Assessment Act 1979*.

Development Consent was issued by under delegated authority on 29 April 2020 for the construction of the IGA Supermarket at 34-38 Fox Street, Walgett. A copy of the Development Assessment and Development Approval is attached to this report.

As the building works were commenced prior to the release of the development application and the issue of a construction certificate, a building certificate was required. It should be noted that building works commenced despite repeated advice from Council officers not to commence, and within 14 days after Council had received the final modified set of development plans for assessment. As Council is not the Certifying Authority, Council Officers were required to cease all works onsite until the required approvals had been issued.

#### Report:

A request was made to modify the original development consent issued under DA2020/1 for the construction of a supermarket. A copy of the modification request and changed site plan is attached. The modification and reason behind consists of:

| Modification                                                                | Reason                                                                                                                                                                 |
|-----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Removal of DA Condition 6 regarding stormwater disposal upgrade carpark. | This is not required given that the existing stormwater infrastructure remains in place as per the stormwater design. The carpark itself has remained and will only be |

|                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                             | extended on the north end to match the extension of the IGA. The stormwater design has accounted for all required falls and onsite detention to the carpark.                                                                                                                                                                                                                                                                                                                                                                                       |
| 2. Removal of DA Condition 10 regarding the use of roller shutters.                                                                                         | The roller shutters are required for security purposes and do not affect the aesthetics of the store given they will be open and not visible for the duration of the trading hours and only shut when the store is closed. It can be noted that many other stores along Fox Street contain roller shutters as a form of security.                                                                                                                                                                                                                  |
| 3. Removal of DA Condition 25 regarding fencing and gates.                                                                                                  | The property boundary is clearly defined by existing features. The store itself is bound physically on all sides; North & West by a School with existing chain fencing and property boundary, South where the carpark is against a row of shops that front Neilly Street, and East by Fox Street. There is clear visibility from Fox Street and fences and gates would impede this and have detrimental effect to the inviting nature of the typical supermarket. Security concerns will be managed through the use of a CCTV surveillance system. |
| 4. Relocation of Existing Bin Refuse to be adjacent the Loading Dock Entrance (see attached plan).                                                          | While the carpark has been appropriately designed for truck movements, relocation of the Bin Refuse will provide additional turning space for trucks manoeuvring around the loading dock entrance. This also keeps the Bin Refuse location away from the street and thus removing it from the street frontage and existing shops, and also positioning it closer to a wash bay that will assist in maintaining a hygienic environment.                                                                                                             |
| 5. DA Condition 7 regarding Footpath Design to be able to be completed/approved at Occupation Certificate Stage rather than Construction Certificate Stage. | This will allow sufficient time for all related design work and avoid delays to the supermarket construction and allow more time for assessment.                                                                                                                                                                                                                                                                                                                                                                                                   |

As this is a modification, the same notification process had to be undertaken. There were no submissions received.

As the modification request changed the concurrence requirements of the NSW Police and Transport for NSW, concurrence was undertaken with both parties. Their response is attached.

A development assessment was undertaken with recommendations supporting only 2 of the proposed modifications. The development assessment is attached to this report

The recommendation was that:



**1. Removal of DA Condition 6 regarding stormwater disposal upgrade carpark.**

Support is **NOT** given for the requested modification. The current stormwater construction does not comply with the approved stormwater design at the time of the previous construction. There are storm water flooding issues in high rain events which the existing drainage construction cannot cater for, and this has been recognised by the developer's representatives and Council. The developer alleges that the current construction modification was approved by a past employee, but there are no file notations to that effect. The developer refuses to pay to correct the stormwater construction to bring it up to the approved standard but insists that Council does. The economic benefit of this development is to the developer and not Council. By allowing this, it sets a precedent for other developers to expect Council to upgrade non-conforming infrastructure construction.

**2. Removal of DA Condition 10 regarding the use of roller shutters.**

Support is **NOT** given for the requested modification. No reasonable planning reason has been given for the direct opposition to the development controls within clause 4.9.5 within the Walgett Development Control Plan. Neither has there been any assessment of cumulative impact nor precedent of similar developments with similar variations, therefore it is hard to support the variation to Council Policy.

**3. Removal of DA Condition 25 regarding fencing and gates.**

Support **IS** given for the requested modification. This is a requirement from NSW Police, and after consultation they have no objection to this requested modification.

**4. Relocation of Existing Bin Refuse to be adjacent the Loading Dock Entrance.**

Support **IS** given for the requested modification subject to a revised swept path diagrams (in accordance with AS2890.2) is to be provided to Council, demonstrating that the 12.5m Heavy Rigid Vehicle can still manoeuvre into the loading dock with the revised location of the bin store. This is as per the advice of Transport for NSW.

**5. DA Condition 7 regarding Footpath Design to be able to be completed/approved at OC Stage rather than CC Stage.**

Support is **NOT** given for the requested modification. This information has been requested from the applicant since November 2019. It is reasonable to assume this information should now be available for consideration by Council. Further, this information should have been available for consideration during the original assessment.

**SUPPORT** is given to this development application modification being approved subject to the original development consent conditions with the following alterations, deletions and inclusions.

| <b>CONDITIONS TO BE MODIFIED</b>                                                                                                 |
|----------------------------------------------------------------------------------------------------------------------------------|
| <i>This development application be approved subject to the following original development consent conditions being modified.</i> |

25 Deleted – DA2020/001-2

~~**Fences and gates**~~

~~The development application received does not state fencing and gates.~~

~~The boundary of the property should be clearly defined by boundary fences preferably of an open-style construction. This allows greater visibility to and from the street, restricts unauthorised access, and clearly defines your territorial space. Fences and gates should be regularly maintained to assist with the protection of the property.~~

~~Gates should be secured with quality hardened or alloy chains and padlocks. All gates should be kept shut and locked when not in use.~~

### **ADDITIONAL CONDITIONS**

*This development application be approved subject to the additional development consent conditions.*

**24a Additional Condition – DA2020/001-2**

*A revised swept path diagrams (in accordance with AS2890.2) is to be provided to Council, demonstrating that the 12.5m Heavy Rigid Vehicle can still manoeuvre into the loading dock with the revised location of the bin store.*

### **MODIFICATIONS TO REASONS FOR CONDITIONS**

*This following modification to the Reasons for Conditions should be included on the development consent.*

**11. Inclusion – DA2020/001-2**

*NSW Police have no objection to the proposed modification.*

**12. Inclusion – DA 2020/001-2**

*Transport for NSW have requested an additional condition that requests compliance with the relevant Australian Standard.*

This recommendation has been made based on planning legislation, council development policy, the actual nonconformance to the approved stormwater plan and the lack of sound planning acumen and argument as required under s4.15 of the *Environmental Planning & Assessment Act 1979*. Council may choose to ignore the recommendation and make a decision based on moral judgement. If that is to occur the following development consent conditions needs to be considered.

The legislated s4.15 evaluation was not undertaken by the applicant, therefore the following comments are made relating to the numbered requested modifications above:

**1. Removal of DA Condition 6 regarding stormwater disposal upgrade carpark.**

Council's Director of Engineering and Technical Services inspected the property and provided the response that though he felt the past history of stormwater flooding in the carpark would be alleviated by including a second pipe from the carpark to the existing stormwater inlet. This had been agreed to in a past onsite inspection, but now the applicant's representative has refused to install the second pip as per the approved plan unless Council meets this cost. It is claimed that a past employee had agreed that the second pipe was not required. Based on this, the Director of Engineering and Technical Services' advice is to remove the conditions relating to the correction of the stormwater issues. There are no file notations regarding this change.

Currently the stormwater construction within the carpark does not comply with the approved stormwater plan at the time of its construction.

Conditions relating to Stormwater are:

### **GENERAL CONDITIONS**

6. *The stormwater disposal is to be upgraded within the car park area. It is to include stormwater grates and a pit into Fox Street. It must comply with the plans as attached marked Stormwater Disposal Plan 1 and 2. Full engineering is to be provided and signed off prior to the release of a construction certificate for works undertaken within the carpark, or a construction certificate being issued for the proposed works.*

### **CONDITIONS TO BE COMPLETED PRIOR TO CONSTRUCTION COMMENCING**

32. *A Construction Certificate is to be provided for each of the following stages:*
1. *Construction of the Building*
  2. *Stormwater works within the existing carpark*

### 3. Works on Footpath in Fox Street.

If there is no insistence on the installation of another stormwater outlet pipe, the existing stormwater flooding events within the carpark will continue. As it is the developer who is gaining the economic benefit from the development and that there are no file notations to substantiate the previous stormwater change, there is no reason to substantiate that Council should bear the cost of installation.

If Council chooses to agree to the modification request as submitted the development consent conditions should be changed to:

#### **GENERAL CONDITIONS**

##### 6. Deleted – DA2020/001-2

~~The stormwater disposal is to be upgraded within the car park area. It is to include stormwater grates and a pit into Fox Street. It must comply with the plans as attached marked Stormwater Disposal Plan 1 and 2. Full engineering is to be provided and signed off prior to the release of a construction certificate for works undertaken within the carpark, or a construction certificate being issued for the proposed works.~~

#### **CONDITIONS TO BE COMPLETED PRIOR TO CONSTRUCTION COMMENCING**

##### 32. Modified – DA2020/001-2

A Construction Certificate is to be provided for each of the following stages:

1. Construction of the Building
2. ~~Stormwater works within the existing carpark~~
3. Works on Footpath in Fox Street.

## **2. Removal of DA Condition 10 regarding the use of roller shutters.**

A roller shutter was requested within the original development application, but due to the threats from the developer to walk away from a development with such a high “community benefit” unless Council released development approval immediately as the builders had commenced work, this issue could not be considered by an Ordinary Meeting of Council due to timing.

Council needs to consider the installation of the roller shutters as it against direct Council development control policy within the Walgett Development Control Plan (WDCP). The relevant DCP control reads:

### **4.9.5 Design**

- Any security measures employed to protect windows or doors facing streets must not have:
  - Bars.
  - Heavy gauge wire mesh (note that ‘crimsafe’ style meshes are acceptable).
  - Exterior roller shutters.
- Such security measures installed on existing commercial premises are to be removed within 12 months of the issue of a Development Consent.
- Building facades shall be articulated by use of colour, arrangement of elements or by varying materials.
- The design of new buildings must reflect and enhance the existing character of the business precinct.
- Building design for new structures must relate to their retail/ commercial/ office function with quality materials at the pedestrian level. Damaged external surfaces on the front façade of existing buildings are to be repaired within 12 months of the issue of a Development Consent for a Change of Use.
- Large expansive blank walls not permitted unless abutting a building on an adjoining allotment.

- *Plans must show the location of all external infrastructure (including air conditioning units, plant rooms, ducting) and demonstrate how it will be screened from view from a public place or road.*
- *Development on corner sites shall incorporate splays, curves, building entries and other architectural elements to reinforce the corner as a land mark feature of the street.*

The previous development had roller shutters included on the plans but the application (Statement of Environmental Effects) had no request for a variation to the WDCP to allow for roller shutters. No planning argument has been provided for this variation, and there has been no impact assessment undertaken for cumulative impact nor precedent of similar developments with similar variations, therefore it is hard to recommend the variation to Council Policy, as no solid planning related basis has been provided.

The applicant claims they will not be able to gain insurance unless they have roller shutters for security.

If Council chooses to agree to the modification request as submitted the development consent conditions should be changed to:

|                           |
|---------------------------|
| <b>GENERAL CONDITIONS</b> |
|---------------------------|

10. Deleted – DA2020/001-2

*Any security measures employed to protect windows or doors facing Fox Street must not have:*

- ~~Bars.~~
- ~~Heavy gauge wire mesh (note that 'crimsafe' style meshes are acceptable).~~
- ~~Exterior roller shutters.~~

Council has to decide if they wish to vary from the development policy and what impact and precedent that variation will create for future developers. By allowing acceding to this request, it will add to the cumulative impact of the existing shutters and it will be very hard to refuse and future developer the same request as the precedent will have been set.

### **3. Removal of DA Condition 25 regarding fencing and gates.**

The applicant actually requested condition 15 be changed and not 25. It is taken that this is a typing error and will be considered as such. This condition was requested by NSW Police, and as they have no objection to the modification, it is assumed they are happy for its removal.

If Council chooses to agree to the modification request as submitted the development consent conditions should be changed to:

|                           |
|---------------------------|
| <b>GENERAL CONDITIONS</b> |
|---------------------------|

|                                                    |
|----------------------------------------------------|
| <b>CONDITIONS AS REQUESTED BY NSW POLICE FORCE</b> |
|----------------------------------------------------|

**Disclaimer**

*The New South Wales Police Force has a vital interest in ensuring the safety of members of the community and their property. By using the recommendations contained in this assessment, any person who does so acknowledges that:*

- *It is not possible to make all areas evaluated by the NSWPF entirely safe for members of the community or the security of their property.*
- *It is based upon the information provided to the NSWPF at the time the assessment was made.*
- *This assessment is a confidential document and is for use of the consent authority unless otherwise agreed.*

*Due to the nature of the development, identified crime risks and issues, we recommend the following:*

25. Deleted – DA2020/001-2

**Fences and gates**

~~The development application received does not state fencing and gates.~~

~~The boundary of the property should be clearly defined by boundary fences preferably of an open-style construction. This allows greater visibility to and from the street, restricts unauthorised access, and clearly defines your territorial space. Fences and gates should be regularly maintained to assist with the protection of the property.~~

~~Gates should be secured with quality hardened or alloy chains and padlocks. All gates should be kept shut and locked when not in use.~~

**4. Relocation of Existing Bin Refuse to be adjacent the Loading Dock Entrance (see attached plan).**

There is no objection to the relocation of the provided it can be shown that a revised swept path diagrams (in accordance with AS2890.20, that the 12.5m Heavy Rigid Vehicle can still manoeuvre into the loading dock with the revised location of the bin store. This is as per TfNSW requirements and will be conditioned as such.

If Council chooses to agree to the modification request as submitted the development consent conditions should include the following condition:

**GENERAL CONDITIONS**

**CONDITIONS AS REQUESTED BY TRANSPORT FOR NSW**

24a Additional Condition – DA2020/001-2

A revised swept path diagrams (in accordance with AS2890.2) is to be provided to Council, demonstrating that the 12.5m Heavy Rigid Vehicle can still manoeuvre into the loading dock with the revised location of the bin store.

**5. DA Condition 7 regarding Footpath Design to be able to be completed/approved at OC Stage rather than CC Stage.**

No detail has been provided as to what works will be required on Councils footpath to enter the store. Discussions held in November 2019 requested this information, and the approved elevations showed that the building was built to the boundary with the awning to overhang Council's footpath and the walkway was to be constructed on Council's footpath. This was to be a raised walkway. Therefore, as this detail had been requested in November 2019, it is not unreasonable for details to be provided by the applicant to Council for approval prior to the release of the construction certificate of the building itself. The construction certificate was released without Council approval being given for any work on the footpath, and it is questionable as to whether this was legal in itself, however condition 32 did ask for a separate construction certificate for the work on the footpath. As no information has been received to date, and that if not received and agreed to by Council at the time of Occupation Certificate, Council will be in the same position with extreme pressure to agree to what is proposed with minimal consultation to enable the supermarket to open.

If Council chooses to agree to the modification request as submitted the development consent conditions should be changed to:

**GENERAL CONDITIONS**

7. Deleted – DA2020/001-2

~~No detail has been provided of the works required on the footpath in relation to the building entry in Fox Street. A full design and engineering plans are to be submitted to Council for approval, prior to any works commencing on the footpath, or a Construction Certificate being~~

~~issued for this work. Please note: these plans must note there will be no trip hazards and any works undertaken are to match the existing footpath within the Fox Street.~~

**CONDITIONS TO BE COMPLETED PRIOR TO CONSTRUCTION COMMENCING**

32. Amended – DA2020/001-2

A Construction Certificate is to be provided for each of the following stages:

1. Construction of the Building
2. Stormwater works within the existing carpark
3. ~~Works on Footpath in Fox Street.~~

And should include the following condition:

**CONDITIONS TO BE COMPLETED PRIOR TO OCCUPATION/USE COMMENCING**

54a. Additional Condition – DA2020/001-2

A full design and engineering plans are to be submitted to Council for approval, prior to any works commencing on the footpath, and completed to the satisfaction of Council's Director of Engineering and Technical Services. These plans must note there will be no trip hazards and any works undertaken are to match the existing footpath within the Fox Street.

**Relevant Reference Documents/Policies:**

Local Government Act (NSW) 1993 & Regulations  
Environmental Planning & Assessment Act 1979 & Regulations  
Walgett Local Environmental Plan 2013  
Walgett Development Control Plan 2016

**Governance issues:**

Nil

**Environmental issues:**

Nil

**Financial Implications:**

Nil

**Alternative Solutions/Options:**

Nil

**Stakeholders:**

Walgett Shire Council  
Developer  
Residents of Walgett Shire Council

M J Urquhart

**Acting General Manager**

**Recommendation:**

That Council approve the modification the development consent conditions for DA2020/001-2, being the construction of a supermarket on Lot 1 DP1203370 known as 34-38 Fox Street, Walgett under section 4.55 of the *Environmental Planning & Assessment Act 1979* as per the recommendation of the Modification t Assessment Report.

**Moved:**

**Seconded:**

**Division Decision**

# ASSESSMENT OF REQUEST FOR MODIFICATION OF DEVELOPMENT CONSENT

| <b>DETAILS OF APPLICATION</b>            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Application Number:</b>               | DA2020/001-2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Development Description:</b>          | Construction of Supermarket                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Details Of Modification Sought:</b>   | <ol style="list-style-type: none"> <li>6. Removal of DA Condition 6 regarding stormwater disposal upgrade carpark.</li> <li>7. Removal of DA Condition 10 regarding the use of roller shutters.</li> <li>8. Removal of DA Condition 25 regarding fencing and gates.</li> <li>9. Relocation of Existing Bin Refuse to be adjacent the Loading Dock Entrance (see attached plan).</li> <li>10. DA Condition 7 regarding Footpath Design to be able to be completed/approved at OC Stage rather than CC Stage.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Reasons Given:</b>                    | <ol style="list-style-type: none"> <li>1. This is not required given that the existing stormwater infrastructure remains in place as per the stormwater design. The carpark itself has remained and will only be extended on the north end to match the extension of the IGA. The stormwater design has accounted for all required falls and onsite detention to the carpark.</li> <li>2. The roller shutters are required for security purposes and do not affect the aesthetics of the store given they will be open and not visible for the duration of the trading hours and only shut when the store is closed. It can be noted that many other stores along Fox Street contain roller shutters as a form of security.</li> <li>3. The property boundary is clearly defined by existing features. The store itself is bound physically on all sides; North &amp; West by a School with existing chain fencing and property boundary, South where the carpark is against a row of shops that front Neilly Street, and East by Fox Street. There is clear visibility from Fox Street and fences and gates would impede this and have detrimental effect to the inviting nature of the typical supermarket. Security concerns will be managed through the use of a CCTV surveillance system.</li> <li>4. While the carpark has been appropriately designed for truck movements, relocation of the Bin Refuse will provide additional turning space for trucks manoeuvring around the loading dock entrance. This also keeps the Bin Refuse location away from the street and thus removing it from the street frontage and existing shops, and also positioning it closer to a wash bay that will assist in maintaining a hygienic environment.</li> <li>5. This will allow sufficient time for all related design work and avoid delays to the supermarket construction and allow more time for assessment.</li> </ol> |
| <b>Revised Plan Numbers:</b>             | Project 2619 Drawing No. DA-00.02 Issue G                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Date of Request for Modification:</b> | 17 June 2020                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>APPLICANT</b>                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Applicant Name:</b>                   | Sail Ray c/o Built Consult Pty Ltd                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Applicant Address:</b>                | Suite F8, 1-15 Barr Street, Balmain NSW 2041                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

| <b>LAND TO BE DEVELOPED</b>                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Address:</b>                                                                                      | 34-38 Fox Street, Walgett                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Legal Description:</b>                                                                                     | Lot 1 DP 1203370                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>ASSESSMENT</b>                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Does applicant have authority to act (owner / original applicant):                                            | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Is the development substantially the same as the original proposal (if not a new application must be lodged): | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Further Referrals:                                                                                            | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Comment:</b>                                                                                               | <p>Referral made to NSW Police &amp; Transport for NSW as per original DA on 23 June 2020.</p> <p><b>NSW Police Response – 2 July 2020</b></p> <p><i>NSW Police does not have any objections to the amended application.</i></p> <p><b>Transport for NSW Response – 27 July 2020</b></p> <p><i>Pursuant to section 104 of State Environmental Planning Policy (Infrastructure) 2007, TfNSW provides the following recommendations for your consideration:</i></p> <ul style="list-style-type: none"> <li>• <i>Stormwater generated by the site is to be managed on site so as to not cause flooding of Fox Street.</i></li> <li>• <i>It is recommended that Council confirm, by way of revised swept path diagrams (in accordance with AS2890.20, that the 12.5m Heavy Rigid Vehicle can still manoeuvre into the loading dock with the revised location of the bin store.</i></li> </ul> <p>There are no issues that cannot be resolved by way of appropriate conditioning.</p>                                                                                                                                                                                                                                                                                                                                  |
| Re-notification required:                                                                                     | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Comment:</b>                                                                                               | Notification carried out as per Council's Community Participation Plan, ie all neighbour properties that had been notified were re-notified of proposed modification. There were no submission received.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Revised s4.15 evaluation consideration attached:                                                              | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Comment:</b>                                                                                               | <p>The legislated s4.15 evaluation was not undertaken by the applicant, therefore the following comments are made relating to the numbered requested modifications above:</p> <p><b>6. Removal of DA Condition 6 regarding stormwater disposal upgrade carpark.</b></p> <p>Council's Director of Engineering and Technical Services inspected the property and provided the response that though he felt the past history of stormwater flooding in the carpark would be alleviated by including a second pipe from the carpark to the existing stormwater inlet. This had been agreed to in a past onsite inspection, but now the applicant's representative has refused to install the second pipe as per the approved plan unless Council meets this cost. It is claimed that a past employee had agreed that the second pipe was not required. Based on this, the Director of Engineering and Technical Services' advice is to remove the conditions relating to the correction of the stormwater issues.</p> <p>There are no file notations regarding this change. If Council chooses to not insist on the installation of another stormwater outlet pipe, the existing stormwater flooding events within the carpark will continue. As it is the developer who is gaining the economic benefit from the</p> |



development and that there are no file notations to substantiate the previous stormwater change, there is no reason to substantiate that Council should bear the cost of installation. Currently the stormwater construction within the carpark does not comply with the approved stormwater plan at the time of its construction.

**7. Removal of DA Condition 10 regarding the use of roller shutters.**

A roller shutter was requested within the original development application, but due to the threats from the developer to walk away from a development with such a high “*community benefit*” unless Council released the development approval immediately as the builders had commenced work, this issue could not be considered by an Ordinary Meeting of Council due to timing.

Council needs to consider the installation of the roller shutters as it against direct Council development control policy within the Walgett Development Control Plan (WDCP). The relevant DCP control reads:

*4.9.5 Design*

- *Any security measures employed to protect windows or doors facing streets must not have:*
  - *Bars.*
  - *Heavy gauge wire mesh (note that ‘crimsafe’ style meshes are acceptable).*
  - *Exterior roller shutters.*
- *Such security measures installed on existing commercial premises are to be removed within 12 months of the issue of a Development Consent.*
- *Building facades shall be articulated by use of colour, arrangement of elements or by varying materials.*
- *The design of new buildings must reflect and enhance the existing character of the business precinct.*
- *Building design for new structures must relate to their retail/ commercial/ office function with quality materials at the pedestrian level. Damaged external surfaces on the front façade of existing buildings are to be repaired within 12 months of the issue of a Development Consent for a Change of Use.*
- *Large expansive blank walls not permitted unless abutting a building on an adjoining allotment.*
- *Plans must show the location of all external infrastructure (including air conditioning units, plant rooms, ducting) and demonstrate how it will be screened from view from a public place or road.*
- *Development on corner sites shall incorporate splays, curves, building entries and other architectural elements to reinforce the corner as a land mark feature of the street.*

The previous development had roller shutters included on the plans but the application (Statement of Environmental Effects) had no request for a variation to the WDCP to allow for roller shutters. No planning argument has been provided for this variation, and there has been no impact assessment undertaken for cumulative impact nor precedent of similar developments with similar variations, therefore it is hard to recommend the variation to Council Policy, as no solid planning related basis has been provided.

The applicant claims they will not be able to gain insurance unless they have roller shutters for security.

**8. Removal of DA Condition 25 regarding fencing and gates.**

The applicant actually requested condition 15 be changed and not 25. It is taken that this is a typing error and will be considered as such. This condition was requested by NSW Police, and as they have no objection to the modification, it is assumed they are happy for its removal.

**9. Relocation of Existing Bin Refuse to be adjacent the Loading Dock Entrance (see attached plan).**

There is no objection to this relocation provided it can be shown that a revised swept path diagrams (in accordance with AS2890.20, that the 12.5m Heavy Rigid Vehicle can still manoeuvre into the loading dock with the revised location of the bin store. This is as per TfNSW requirements and will be conditioned as such.

**10. DA Condition 7 regarding Footpath Design to be able to be completed/approved at OC Stage rather than CC Stage.**

No detail has been provided as to what works will be required on Council's footpath to enter the store. Discussions held in November 2019 requested this information, and the approved elevations showed that the building was built to the boundary with the awning to overhang Council's footpath and the walkway was to be constructed on Council's footpath. This was to be a raised walkway. Therefore, as this detail had been requested in November 2019, it is not unreasonable for details to be provided by the applicant to Council for approval prior to the release of the construction certificate of the building itself. The construction certificate was released without Council approval being given for any work on the footpath, and it is questionable as to whether this was legal in itself, however condition 32 did ask for a separate construction certificate for the work on the footpath. As no information has been received to date, and that if not received and agreed to by Council at the time of Occupation Certificate, Council will be in the same position with extreme pressure to agree to what is proposed with minimal consultation to enable the supermarket to open.

## RECOMMENDATION

**6. Removal of DA Condition 6 regarding stormwater disposal upgrade carpark.**

Support is **NOT** given for the requested modification. The current stormwater construction does not comply with the approved stormwater design at the time of the previous construction. There are storm water flooding issues in high rain events which the existing drainage construction cannot cater for, and this has been recognised by the developer's representatives and Council. The developer alleges that the current construction modification was approved by a past employee, but there are no file notations to that effect. The developer refuses to pay to correct the stormwater construction to bring it up to the approved standard but insists that Council does. The economic benefit of this development is to the developer and not Council. By allowing this, it sets a precedent for other developers to expect Council to upgrade non-conforming infrastructure construction.

**7. Removal of DA Condition 10 regarding the use of roller shutters.**

Support is **NOT** given for the requested modification. No reasonable planning reason has been given for the direct opposition to the development controls within clause 4.9.5 within the Walgett Development Control Plan. Neither has there been any assessment of cumulative impact nor precedent of similar developments with similar variations, therefore it is hard to support the variation to Council Policy.

**8. Removal of DA Condition 25 regarding fencing and gates.**

Support **IS** given for the requested modification. This is a requirement from NSW Police, and after consultation they have no objection to this requested modification.

**9. Relocation of Existing Bin Refuse to be adjacent the Loading Dock Entrance.**

Support **IS** given for the requested modification subject to a revised swept path diagrams (in accordance with AS2890.2) is to be provided to Council, demonstrating that the 12.5m Heavy Rigid Vehicle can still manoeuvre into the loading dock with the revised location of the bin store. This is as per the advice of Transport for NSW.

**10. DA Condition 7 regarding Footpath Design to be able to be completed/approved at OC Stage rather than CC Stage.**

Support is **NOT** given for the requested modification. This information has been requested from the applicant since November 2019. It is reasonable to assume this information should now be available for consideration

by Council. Further, this information should have been available for consideration during the original assessment.

**SUPPORT** is given to this development application modification being approved subject to the original development consent conditions with the following alterations, deletions and inclusions.

#### CONDITIONS TO BE MODIFIED

This development application be approved subject to the following original development consent conditions being modified.

25 Deleted – DA2020/001-2

**~~Fences and gates~~**

~~The development application received does not state fencing and gates.~~

~~The boundary of the property should be clearly defined by boundary fences preferably of an open style construction. This allows greater visibility to and from the street, restricts unauthorised access, and clearly defines your territorial space. Fences and gates should be regularly maintained to assist with the protection of the property.~~

~~Gates should be secured with quality hardened or alloy chains and padlocks. All gates should be kept shut and locked when not in use.~~

#### ADDITIONAL CONDITIONS

This development application be approved subject to the additional development consent conditions.

24a Additional Condition – DA2020/001-2

A revised swept path diagrams (in accordance with AS2890.2) is to be provided to Council, demonstrating that the 12.5m Heavy Rigid Vehicle can still manoeuvre into the loading dock with the revised location of the bin store.

#### MODIFICATIONS TO REASONS FOR CONDITIONS

This following modification to the Reasons for Conditions should be included on the development consent.

11. Inclusion – DA2020/001-2

NSW Police have no objection to the proposed modification.

12. Inclusion – DA2020/001-2

Transport for NSW have requested an additional condition that requests compliance with the relevant Australian Standard.

#### CONCLUSION


I confirm that I am familiar with the relevant heads of consideration under the Environmental Planning & Assessment Act and Local Government Act (if applicable) and have considered them in the assessment of this application.

I certify that I have no pecuniary or non-pecuniary interest in this application.

Additional Notes Attached

- NSW Police Response
- Transport for NSW Response

Yes  No

|                                                                                                                                                                                                 |                                                   |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>• Engineering Response</li> <li>• Original Development Consent</li> <li>• Modification Request including site plan for refuse bin relocation.</li> </ul> |                                                   |  |
| <br>Signed:                                                                                                    |                                                   |  |
| Elizabeth Cumming, Consultant Planner                                                                                                                                                           | Jessica McDonald, Director Environmental Services |  |
| Date: 5 August 2020                                                                                                                                                                             | Date: 5 August 2020                               |  |

## 6. CLOSE OF MEETING

**Time:** .....