

DEVELOPMENT APPLICATION MODIFICATION – IGA SUPERMARKET, 34-38 FOX STREET, WALGETT

REPORTING SECTION: Planning
AUTHOR: Libby Cumming, Contract Town Planner
FILE NUMBER: DA2020/001-2

Summary:

This report is to consider the removal of DA2020/001-2 Condition 6 regarding stormwater disposal upgrade for the carpark.

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 modified development consent was issued on 11 August 2020 after an Extra Ordinary Meeting held 10 August 2020. It modified the following areas:

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

Report:

A request was made to modify the original development consent issued under DA2020/1 for the construction of a supermarket.

The current 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. *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*~~
 1. *Works on Footpath in Fox Street.*

The recommendation at the Extra Ordinary Meeting held on 10 August 2020 was that:

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

*Support **NOT** be 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.

This recommendation was made based on planning legislation, council development policy, the actual non-conformance 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'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.

No file notations regarding this change were located prior to this meeting, and the current stormwater infrastructure construction within the carpark does not comply with the approved stormwater plan located in Council's records. However, the developer's representative has since located correspondence from Council dated 6 November 2014, which states the following.

RE: NON-COMPLIANCE WITH CONDITIONS OF DEVELOPMENT CONSENT 2014/005

Today, Council staff observed that 2x100mm pipes have been installed to discharge to Council's Fox St stormwater main for the supermarket building being constructed at 34-38 Fox St, under Development Consent 2014/005.

Council has repeatedly reinforced with the Project Manager and other proponents of the project, that it expects compliance with conditions of development consent regarding stormwater. The stormwater discharge pipes to the Fox Street main do not comply with condition Plu 16, which states as follows:

Plu 16.

Stormwater discharge from the site to Council's stormwater system is restricted to one pipe with a maximum diameter of 100 millimetres to the Fox Street main.

Reason: To reduce the impact of stormwater flows on adjoining areas from the development site.

Please note that sub-clause 154(1B) of the Environmental Planning and Assessment Regulation 2000 prevents the issue of an Occupation Certificate to enable the use of the building whilst any part of the new structure is inconsistent with Development Consent 2014/005.

Based on this advice it is unreasonable to not consider the deletion of condition 6 as per the original requested modification. If Council chooses to agree to the modification request as submitted the development consent Condition 6 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.*~~

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

Stakeholders:

Walgett Shire Council
Developer
Residents of Walgett Shire Council

Development Application Modification – IGA Supermarket, 34-38 Fox Street, Walgett**Recommendation:**

That Council delete Condition 6 in 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.

Moved:**Seconded:****Division Decision****Attachment:**

Letter – Non-Compliance with conditions of development consent 2014/005

KC, DA2014/005/0101, Ass 2782 & 2790

Prafulla KC

06 November 2014

Vaidehi Adhikari
9 Warruga Place
Riverview NSW 2066

Dear Madam,

RE: NON-COMPLIANCE WITH CONDITIONS OF DEVELOPMENT CONSENT 2014/005

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Council has repeatedly reinforced with the Project Manager and other proponents of the project, that it expects compliance with conditions of development consent regarding stormwater. The stormwater discharge pipes to the Fox Street main do not comply with condition Plu 16, which states as follows:

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Stormwater discharge from the site to Council's stormwater system is restricted to one pipe with a maximum diameter of 100 millimetres to the Fox Street main.

Reason: To reduce the impact of stormwater flows on adjoining areas from the development site.

Please note that sub-clause 154(1B) of the Environmental Planning and Assessment Regulation 2000 prevents the issue of an Occupation Certificate to enable the use of the building whilst any part of the new structure is inconsistent with Development Consent 2014/005.

Please contact me, or Council's Town Planner, Matt Clarkson, if you require any additional information.

Yours faithfully,

Prafulla KC
Acting Director of Urban Infrastructure Services
For and on behalf of Don Ramsland, General Manager

C.C. *John Innes*
Project Manager
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