

# Notice of Determination of Development Application

Environmental Planning and Assessment Act 1979

Notice is hereby given of the determination by Council to the above Development Application pursuant to Section 4.18(1) of the Environmental Planning & Assessment Act, 1979.

<b>Application Number:</b>	DA20/0196
<b>Applicant:</b>	Meccanico Espresso & Wine 1/171 Fitzmaurice St WAGGA WAGGA NSW 2650
<b>Land to be Developed:</b>	171 Fitzmaurice St WAGGA WAGGA NSW 2650 Part Lot 3 DP 219286, Part Lot 1 DP 157697
<b>Description</b>	Drop down blinds to existing cantilevered awning
<b>Determination:</b>	Approved subject to Conditions
<b>Date of Determination:</b>	24/06/2020
<b>Consent to Operate from:</b>	24/06/2020
<b>Consent to Lapse on:</b>	24/06/2025
<b>Other Approvals:</b>	Nil

On behalf of the Council



Cameron Collins  
Development Assessment Coordinator

**Right of Appeal** - Where an applicant is dissatisfied with this determination, the applicant has the right to appeal the decision to the Land and Environment Court within a period of 12 months from the date the decision is notified or registered on the NSW planning portal

**Review of Determination** - The applicant may request the Council to review the determination. A determination cannot be reviewed after the period within which an appeal may be made to the Land and Environment Court has expired or, if an appeal has been made against the determination, after the Court has disposed of that appeal.

## CONDITIONS OF CONSENT FOR APPLICATION NO. DA20/0196

### A. SCHEDULE A – Reasons for Conditions

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

- A.1 To ensure compliance with the terms of the Environmental Planning and Assessment Act 1979 and Regulation 2000.
- A.2 Having regard to Council's duties of consideration under Section 4.15 and 4.17 of the Act.
- A.3 To ensure an appropriate level of provision of amenities and services occurs within the City and to occupants of sites.
- A.4 To improve the amenity, safety and environmental quality of the locality.
- A.5 Having regard to environmental quality, the circumstances of the case and the public interest.
- A.6 Having regard to the Wagga Wagga Development Control Plan 2010.
- A.7 To help retain and enhance streetscape quality.
- A.8 Ensure compatibility with adjoining and neighbouring land uses and built form.
- A.9 To protect public interest, the environment and existing amenity of the locality.
- A.10 To minimise health risk to neighbouring residents and workers.

### B. SCHEDULE B – Deferred Commencement Conditions

N/A

### C. SCHEDULE C – Conditions

#### Approved Plans and Documentation

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

Plan/DocNo	Plan/Doc Title	Prepared by	Issue	Date
19-04F Sheet A01	Site Plan	Icono Building Design	2	7/5/2020
19-04F Sheet A02	Floor Plan	Icono Building Design	2	7/5/2020
19-04F Sheet A03	Elevations & Sections	Icono Building Design	2	7/5/2020
-	Clear PVC Drop Blinds	Kotzur Kanvas	-	Undated
-	Flush Anchor Points - Section Details	Icono Building Design	-	25/5/2020
-	Statement of Environmental Effects	Icono Building Design	A	7/5/2020

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

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

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

- C.2 Public liability insurance is to be taken out and maintained during the period this Consent operates in relation to the activity authorised by this Consent for an amount of \$20,000,000.00 noting the Council's interest as the owner of the public road over which the awning is located. Written evidence of such insurance is to be provided to the Council before any work authorised by this Consent.
- C.3 No work authorised by this Consent may be carried out unless the Council has first approved arrangements to protect pedestrians, cyclists and motorists using the road reserve during the period in which such work will be carried out, being arrangements that do not unduly interfere with the use of the footpath or carriageway.
- C.4 Prior to works or activities commencing within the road reserve, approval under Section 138 of the Roads Act 1993 is required from Council.

A written application for Consent to Work on a Road Reserve is required to be submitted to and approved by Council. This shall include the preparation of a certified Temporary Traffic Management Plan (TTP) for the works.

It should be noted that work in the existing road reserve can only commence after the plan has been submitted and approved and then only in accordance with the submitted TTP. Please contact Council's Activities in Road Reserves Officer on 1300 292 442.

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

- C.5 No construction materials, plant or equipment relating to work authorised by this consent are to be placed or stored within the road reserve during the period in which work authorised by this consent will be carried out without the prior written approval of the Council.
- C.6 The blinds and fittings shall be installed so as to be fully concealed behind the awning fascia as detailed in the approved plans.

### **General requirements**

- C.7 The blinds may only be used whilst there is a current Deed of Agreement with Council issued under Council's 'Activities on Footpath Policy' (POL 041). The operation and use of the blinds must not cause any contravention to the agreements contained within the deed including, but not limited to:
- The cessation of use of the area (required removal of chairs and tables) by 10:30pm.
  - The maintenance of a 1.8 metre wide unobstructed public thoroughfare.

In addition to this, the blinds may only be in use during the approved operating hours for the café/wine bar tenancy as approved under Condition 52 of development consent DA18/0428 issued on 8 August 2019 (or any subsequent modification of that consent) and only at times during which tables and chairs are permitted on the footpath under the Deed of Agreement with Council issued under Council's 'Activities on Footpath Policy' (POL 041).

During all other times, the blinds shall be fully retracted behind the awning fascia.

- C.8 The blinds shall be maintained in good condition at all times so that clear visibility is maintained between the footpath area and the remainder of the street whenever they are in use. No signage, advertising or any other materials that would obstruct visibility are permitted to be attached to the surface of the blinds at any time.
- C.9 The proposed pavement anchors shall be maintained in good condition to ensure that they operate correctly at all times and remain flush with the pavement surface at all times when not in use.

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

N/A

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

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

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

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

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

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

NOTE 1: This condition does not apply:

- (a) to the extent to which an exemption is in force under clause 187 or 188 of the Environmental Planning and Assessment Regulation 2000 (the Regulation), subject to the terms of any condition or requirement referred to in clause 187(6) or 188(4) of the Regulation, or

- (b) to the erection of a temporary building, other than a temporary structure to which part (3) of this condition applies.

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

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

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

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

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

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

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

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

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

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

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

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

- (a) in the case of work for which a principal contractor is required to be appointed:
  - i) the name and licence number of the principal contractor, and

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

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

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

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

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

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

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

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

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

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

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

- (a) protect and support the building, structure or work from possible damage from the excavation, and

- (b) where necessary, underpin the building, structure or work to prevent any such damage.

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

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

N/A