



Report of Development Application

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

APPLICATION DETAILS

Application No:	DA20/0196
Council File No:	D/2020/0196
Date of Lodgement:	07/05/2020
Applicant:	Meccanico Espresso & Wine 1/171 Fitzmaurice St WAGGA WAGGA NSW 2650
Proposal:	Drop down blinds to existing cantilevered awning
Development Cost	\$6000
Description of Modification:	N/A
Other Approvals:	Nil
Determination Body & Reason:	Officer Delegation 7.39
Assessment Officer:	Cameron Collins

SITE DETAILS

Subject Land:	171 Fitzmaurice St WAGGA WAGGA NSW 2650 Part Lot 3 DP 219286, Part Lot 1 DP 157697
Owner:	DTH Russell & JL Russell

REPORT

PLANNING CONTROLS / STATUTORY CLASSIFICATION

Pursuant to Part 4 (Division 1)

Application No.:	Development Application
Modification No.:	No
Council File No.:	Internal
Date of Lodgement:	

Description of Development

The application is for the installation of drop down and retractable weather blinds along the front edge and part of the ends of the existing cantilevered awning over Fitzmaurice Street. The following description has been provided with the application:

- *The tenant at 171 Fitzmaurice Street, Meccanico Espresso, are proposing new drop down blinds to the existing shopfront awning to provide a comfortable outdoor environment for the approved customer seating along Fitzmaurice Street.*
- *There will be a series of 6 individual blinds. These blinds will run the full length of the awning with a return blind at both ends to create a semi-enclosed area sheltered from the weather.*
- *It is anticipated these blinds to be used in the colder months and during inclement weather. These blinds are to be retractable. I.e. they can be rolled away hidden within the existing awning when not required with the use of a crank handle.*
- *When in use these blinds will be tied down in tension by straps to proposed anchor points in the existing paving.*

The proposed drop down blinds will be used in association with the Meccanico tenancy and in relation to the approved on-street dining area beneath the existing cantilevered awning. In addition, it is noted from the application that:

- The blinds will be manufactured from clear PVC.
- The blinds will be manually operated using a removable crank handle.
- When in use, the blinds will be strapped to the pavement surface using spring loaded eyelet anchors. When not in use, the eyelet anchor will be flush with the pavement surface.
- The blinds are fully retractable and have been designed to be concealed behind the existing awning fascia.

It is noted that the application identifies the proposed operating hours as:

- Monday through to Friday - 6.30am - 12am,
- Saturday - 7.00am - 12am
- Sunday 7.30am -10pm

These hours are inconsistent with the approved hours for the café/wine bar tenancy approved under DA18/0428 (condition 52) which are:

The approved uses must only be conducted as follows:

Café/wine bar

- *On Monday to Sunday inclusive between the hours of 6:30am and 11:00pm*

This will be addressed in a recommended condition of consent.

It is also noted that the tenant (Meccanico) currently has a deed of agreement with Council for the use of the footpath area under the Activities on Footpath policy (POL 041). It is noted under this policy and the agreement that the proprietor must remove tables and chairs (cease the use of this area) by 10:30pm. It is also noted that the policy/agreement requirement the

maintenance of a 1.8 metre unobstructed thoroughfare for pedestrians. In this regard, it is recommended that conditions of consent be included to ensure that the operation and use of the blinds remains consistent with a current deed of agreement at all times.

The Site and Locality

The subject site is identified as 171 Fitzmaurice Street and is located on the river side of Fitzmaurice Street, approximately 90 metres from its intersection with Crampton Street. The property has frontage to both Fitzmaurice Street and also Cadell Place at the rear. The site consists of the following allotments:

- Part Lot 1 DP 157697 - approximately 506 square metres
- Part Lot 3 DP 219286 - approximately 765 square metres
- Total area - approximately 1764 square metres

Part Lot 1 and Part Lot 3 extend from Fitzmaurice Street through to Cadell Place and contain the main building on the site which has a floor area of approximately 741 square metres. The front section of the building is constructed with masonry walls with rendered finish. The building contains a prominent façade to Fitzmaurice Street with a cantilevered awning over the footpath.

The rear section of the building (extending through to Cadell Place) is clad with corrugated iron sheeting and consists of a series of interconnected spaces. The condition of the fabric of the building as observed upon inspection is described as fair with parts of the building being in poor condition. The building is connected to the service station building located on the adjacent property.

The site is located immediately adjacent Cadell Place and the Murrumbidgee River concrete levee system. Land uses to the north, south and west are predominantly commercial in nature. As identified above, the main building is interconnected with the service station building.

Easements and Covenants

Deposited Plan 219286 identifies the following easements:

- Easement for flood mitigation over Part Lot 3 DP 219286. Not affected by this development.

Previous consents and uses of site

The site has been used for motor vehicle repairs since the mid-1940s. DA3/83 consented to the use of part of the building for the sale and fitting of motorbike tyres - This use no longer occurs on the site.

On 8/8/2019, Council approved Development Consent DA18/0428 for a mixed-use commercial development on the site incorporating, amongst other uses, a café/wine bar (known as *Meccanico*) fronting Fitzmaurice Street. The Meccanico business has now been established within the front tenancy as stage 1 of the development. The proposed drop down blinds will be used as part of this tenancy and in relation to the on-street dining area beneath the existing cantilevered awning (currently subject to an existing deed of agreement with Council as discussed earlier).

MATTERS FOR CONSIDERATION PURSUANT TO SECTION 4.15(1)

Section 4.15(1)(a)(i) - The provisions of any environmental planning instrument (EPI)

Wagga Wagga Local Environmental Plan 2010 (LEP 2010)

The following section of this report details the development with reference to the guiding principles and Objectives of the *Wagga Wagga Local Environmental Plan 2010*.

Part 2 Permitted or prohibited development Land Use

Under the provisions of the LEP, the subject site is zoned B3 - Commercial Core. The objectives of the zone are:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To ensure the maintenance and improvement of the historic, architectural and aesthetic character of the commercial core area.*

The mixture of uses (including the café/wine bar tenancy) proposed under the previously approved application (DA18/0428) were determined to be consistent these objectives. As the blinds will be ancillary to the operation of the existing approved tenancy, it is satisfied the development will remain consistent with the objectives of the B3 zone including the provision of suitable land uses that serve the needs of the local and wider community.

The Meccanico tenancy falls within the following defined land uses which is permitted with consent in the B3 zone under the LEP 2010:

- Retail premises
 - food and drink premises

Part 3 Exempt & Complying Development

The proposed development is not Exempt or Complying Development.

Part 4 Principal development standards

The height of building (Clause 4.3) and the floor space ratio (Clause 4.4) standards will not be affected as a result of the proposed development.

Part 5 Miscellaneous provisions

5.9 Preservation of trees or vegetation

The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation. No vegetation exists on the site and no vegetation will be removed as a result of the development proposal.

5.10 Heritage conservation

The development site is located in the Heritage Conservation area. Before granting consent under this clause in respect of a heritage item or heritage conservation area, Council must consider the effect of the proposed development on the heritage significance of the item or area concerned. The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Wagga Wagga,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

It is considered that this application complies with these objectives. A full assessment of the application against the heritage provisions of the *Wagga Wagga Development Control Plan 2010* has been included in this report which demonstrates that the development will be able to exist without having a significant impact on the historical values of the locality.

Part 6 Urban Release Areas

Not applicable.

Part 7 Additional Local Provisions

7.2 Flood Planning

The site is identified as being located in flood area. The objectives of this clause are as follows:

- (a) *to minimise the flood risk to life and property associated with the use of land,*
- (b) *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- (c) *to avoid significant adverse impacts on flood behaviour and the environment.*

The impact of the proposed development is considered to have no significant impact on flooding as the proposed development site is protected by the main city levee. This is discussed in more detail under the flood controls of the *Wagga Wagga Development Control Plan 2010* (refer to part a(iii) of this report).

7.6 Groundwater vulnerability - Water Resource Map

The subject site is identified as land on which the impacts of the development on groundwater should be considered. The uses (retail premises - food and drink) is not listed for the purpose of this clause. It is not anticipated that the proposed development will have any negative impact on groundwater resources.

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No. 55

Matters concerning the contamination have been addressed in detail within the assessment report relating to DA18/0428. As identified in that assessment, the area of the site, the subject of Stage 1 of this application, is unlikely to be contaminated to a state that would render this part of the site unsuitable for its intended use (including the café/wine bar use). It is satisfied that this assessment remains applicable with regard to the proposal to install drop down blinds for use in association with the café/wine bar.

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

There are a number of state environmental planning policies currently subject to review, including some which have involved consultation and notification. With the exception of the following, none of these are applicable to this application.

Remediation of Land SEPP and repeal of State Environmental Planning Policy 55

The draft SEPP will not impact on the assessment of this application under SEPP 55 with regard to the potential contamination of this site and its suitability for the proposed development.

Section 4.15(1)(a)(iii) - any development control plan

Wagga Wagga Development Control Plan 2010

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

Section 1 - General

1.10 Notification of Development Application

Pursuant to this provision, notification and advertising of the application are required. Notification was conducted to properties surrounding the development. See later in this report under Section 4.15(1)(d) for further discussion of this matter.

Section 2 - Controls that Apply to All Development

2.1 Site Analysis Plan

The site development plan submitted with the application sufficiently indicates the site constraints in terms of land form, orientation and accessibility. An assessment of the proposal against the relevant controls of the DCP has demonstrated that the development is compatible with surrounding developments. In terms of the design and aesthetical appearance, the development will remain consistent with the existing scale and form of the buildings on site. The development will continue to promote the ongoing revival and enhancement of the site and the works are not anticipated to result in adverse effects on the built and natural environment.

2.2 Vehicle access and movements

The blinds have been designed to allow for a clear pathway for pedestrian movement adjacent to the shop front alignment in Fitzmaurice Street. This has been confirmed with Council's Rangers who are responsible for policing the on-street dining provisions (by an existing deed

of agreement). Under these provisions, a 1.8 m clearway is required which can be maintained. A condition reinforcing this has been recommended.

The blinds will only be permitted to be in use during the approved operating hours of the café/wine bar tenancy and also in accordance with any time restrictions imposed under the on-street dining deed of agreement. This will ensure that the blinds do not pose a safety concern for pedestrians outside of business hours. The fixing anchors on in the footpath have also been designed so as to be flush with the pavement service to minimise risk to pedestrians. Conditions reinforcing these matters have been recommended as part of any consent granted.

The redevelopment of this site (under DA18/0428) resulted in the removal of a vehicular access to Fitzmaurice street which has improved access for pedestrians and the use of the footpath area. This development will further reinforce the area as a pedestrian friendly environment.

The blinds will be clear to maintain visibility when they are in use, particularly visibility between pedestrians and motorists moving along Fitzmaurice Street and also motorists accessing the adjacent driveway servicing the existing service station immediately to the north. A condition of consent will reinforce the requirement for the blinds to be clear and to be maintained in good condition at all times.

The blinds will maintain an appropriate setback to the kerb line of the street and will therefore not impinge on accessibility to motor vehicles parked in Fitzmaurice Street.

2.3 Off-street parking

The development will not impact on the requirement for off street parking as originally assessed under DA18/0426.

2.4 Landscaping

The site does not currently contain any existing vegetation or landscaping. Whilst no landscaping is required, the use of the blinds and other furnishings within the footpath areas for dining will contribute aesthetically to the locality.

2.5 Signage

No signage is proposed as part of this application. A condition of any consent will require that the blinds remain clear of any obstruction (including signage) that may impact on visibility.

2.6 Safety and Security

The controls of this section encourage the design of buildings and areas to maximise the safety and security of persons from crime. It is satisfied that the design and materials selected for the blinds will not result in any safety or security issues. Concerns relating to pedestrian/motorist safety have been discussed earlier and appropriate conditions recommended.

Further to this, the blinds will only be permitted to be in use during the approved operating hours of the café/wine bar tenancy and also in accordance with any time restrictions (currently

10:30pm) imposed under the on-street dining deed of agreement. When not in use, the blinds can be fully retracted inside the fascia of the existing awning where they will be clear of the footpath and less susceptible to vandalism. As identified earlier, the fixing anchors on the pavement have been designed so as to flush with the pavement surface to minimise risk to pedestrians.

The development will further reinforce of the area as a pedestrian zone resulting in improved natural surveillance and safety along this section of Fitzmaurice Street.

2.7 Changing the land form - cut and fill

No cut or fill will be required as part of this development proposal.

2.8 Erosion and Sediment Control Principles

No soil disturbance will occur that will require the implementation of specific controls as part of this development.

2.9 Development adjoining open space

The development site is opposite the open space corridor along the Murrumbidgee River. The development is located on the Fitzmaurice Street elevation and will have no impact on this area.

Section 3 - Heritage Conservation

The subject site is located within the Heritage Conservation Area and must therefore consider the effect of any works on the historical streetscape.

3.3.1 Fitzmaurice commercial precinct

The proposed development is for the installation of drop down and retractable blinds along the front edge and part of the ends of the existing cantilevered awning over Fitzmaurice Street. The existing building and its façade (brick shopfront with metal clad sheds behind) is not a contributory item within the streetscape with its previous use being as a garage and for the retail/fitting of motorcycle tyres. The works undertaken as part of DA18/0428 have not significantly altered the existing brick shopfront structure with the exception of a new glazed shop front to the entry and new access doors to the front café tenancy.

As discussed earlier, the proposed blinds will be transparent and will allow for continued visibility through to the shopfront and footpath from Fitzmaurice Street. When retracted, the blinds and mechanisms will be concealed within the structure of the existing awning and, whilst visible from beneath the awning, will not be visible when viewed from other parts of Fitzmaurice Street. The blinds will only be permitted to be in use during the approved operating hours of the café/wine bar tenancy and in accordance with any time restrictions imposed via the on-street dining deed of agreement.

Having regard to these matters, it is satisfied that the proposed development will not have any detrimental impact on the conservation area. It is satisfied that the development is consistent with the objectives of this section of the DCP.

Section 4 - Environmental Hazards and management

4.1 Bushfire

Whilst the rear of the site is mapped as bushfire prone land (as a result of the riverine vegetation corridor), the development will not result in any bushfire risks or concerns.

4.2 Flooding

The site is not mapped as flood prone land even though it is located immediately behind the levee system. Despite this, the site is protected by the main city levee which is currently being upgraded to protect the CBD from the 1:100 year flood event. In addition to this, the proposal will have no bearing on flood behaviour in the locality or exacerbate the impacts and consequences caused by flooding. The risk to life and property as a result of flooding is considered acceptable.

Section 5 - Natural Resource and Landscape Management

Natural Resources Sensitivity - groundwater - Refer to Clause 7.6 of the LEP 2010.

Section 6 - Villages

Not applicable

Section 7 - Subdivision

Not applicable

Section 8 - Rural Development

Not applicable

Section 9 - Residential Development

Not applicable

Section 10 - Business Development

10.1 City Centre

The subject development site is located within the Fitzmaurice Street Precinct of the central business area of the city centre. The design principles contained in Section 10.1, seeks to reinforce the character and function of the Fitzmaurice Street precinct and integrate with the emerging character of the adjoining Baylis Street Precinct and adjacent residential areas. Within the Fitzmaurice Street precinct the objective is to support the ongoing economic viability of the precinct and support the application of heritage controls for the Fitzmaurice Street Conservation Area. Subject to the discussion below, the development application complies with the relevant controls in this section and will achieve the outcome sought for business development in Fitzmaurice Street.

C2 Maintain the two to three storey street wall to Fitzmaurice Street. Where upper levels are proposed, provide a nominal setback behind the parapet line as shown on Figure 10.1.2.

C3 Maintain a two storey street wall to Cadell Place and provide opportunities for upper levels to enjoy outlook over the Murrumbidgee River by providing an increased setback as shown in Figure 10.1.3.

The development proposes the installation of drop down weather blinds as part of an ongoing refurbishment and re-use of the existing building stock on the site which is made up of single store structures. Whilst the development is not achieving the goals of the controls, the proposed development and use of the site will not detract from the ability of this site to be further developed at a later time.

This section of the DCP also references the need to consider section 3.3.1 (heritage conservation - Fitzmaurice commercial precinct) and section 12.10 (Wagga Wagga Riverside Master Plan). Section 3.3.1 has been addressed earlier in this report. Section 12.10 is addressed below.

10.1 Awning Controls

Whilst the development does not propose any substantial alteration to the existing cantilevered awning at this site, the proposed drop-down blinds will be fixed to the outer edge of the awning and therefore an assessment against the relevant provisions of this section is applicable.

With respect to the objectives of this section, it is satisfied that the development will attain objective O5 *'To ensure that awnings are functionally designed and promote adequate weather protection for pedestrians'* through the maintenance of the existing awning and through its improved functionality afforded by the addition of the weather blinds.

The following controls are considered relevant under this section:

C2 - Cantilevered or suspended awnings are to be a minimum height of 3000mm above footpath and have a minimum width of 2400mm from the building edge.

Whilst this development will result in no alteration to the physical configuration of the existing cantilevered awning, it is noted that the height of the existing awning is 2.83 metres above footpath level. Despite the awning not being compliant with this control, it is important to note that the blinds have been designed so that they will retract within the framework of the awning and will therefore not affect the clearance above street level when not in use. The width of the awning (3.945m) remains unchanged and is compliant.

C3 The height of the fascia shall be minimum 300mm, maximum 450mm.

The height of the existing fascia of the awning is unaltered by the installation of the blinds and remains compliant.

C4 Roll up canvas blinds are permitted to be suspended from the outer edge of the awning. The blinds shall provide a minimum clearance of 2600mm above the footpath level. Blinds shall not be used for advertising purposes.

This control relates to blinds normally designed to provide protection from morning or afternoon sun due to the orientation of both Baylis and Fitzmaurice Streets. They extend below the awning edge and often remain in place without being retracted for ease of use (hence the requirement for a 2.6m clearance to be maintained). These types of blinds were more

common in the past however there are not many examples remaining in either street.

The proposed weather blinds are not compliant with this control as they are designed to extend down to within 300mm of the footpath level. However, as they are only to be used during the approved hours of operation of the footpath dining area and will be fully retracted within the awning structure at other times, it is satisfied that they will meet the intention of this control.

C8 Air conditioners, heaters and similar items should not be mounted on street awnings or the front facades of buildings. Consideration may be given to the mounting of heating/cooling appliances underneath the awning if the height of the appliance can comply with the controls in this sections and public health and safety can be protected.

Whilst this control relates to other forms of fixtures, it is noted that the proposed blinds will be fixed in such a manner so as to be concealed behind the existing fascia of the awning.

C10 Signage shall be integrated into the awning design and not extend past the edges of any fascia, post or other awning element and be in accordance with the DCP advertising provisions.

The blinds will affect any existing signage on the awning. No approval will be given for any signage to form part of the extended blinds. Conditions of consent have been recommended addressing this issue.

Section 11 - Industrial Development

Not applicable

Section 12 - Specific Uses and Developments

12.10 Wagga Wagga Riverside Master Plan

The site has frontage to Cadell Place which is addressed within Riverside Master Plan. However, as the proposal is for the installation of blinds to the Fitzmaurice Street elevation of the site, it is considered that this section is not relevant to the assessment.

Section 13 - Bomen Urban Release Area

Not applicable

Section 14 - Boorooma Urban Release Area

Not applicable

Section 15 - Lloyd Urban Release Area

Not applicable

Section 4.15(1)(a)(iia) - any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

No related planning agreement has been entered into under section 7.4.

Section 4.15(1)(a)(iv) - the regulation

Matters prescribed by the *Environmental Planning and Assessment Regulation 2000* have been satisfied.

Section 4.15(1)(b) - The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Context & Setting

The proposed development will promote the activation of the footpath area and will encourage the ongoing development of this section of Fitzmaurice Street. The development will result in the ongoing revitalisation of the site, allowing the community to access and experience the buildings diversity of land use within the area.

As discussed earlier, the blinds will be clear and will maintain good visibility between the shopfront and other areas of the street. It is satisfied that the development will have positive impact on the context and setting of the area.

Streetscape

The selected design and material of the blinds will ensure that the development has a negligible impact on the streetscape. The blinds will maintain visibility between the shopfront and other areas of the street and will be fully retracted outside of business hours.

Solar access

The development will not have a detrimental impact on solar access. The blinds will allow for the continued use of the footpath area in differing weather conditions.

Traffic, access and parking

Refer to earlier discussion.

Utilities/services

The development will have negligible impact on existing utilities located within Fitzmaurice Street as the blinds will be fully retractable.

Heritage

Refer to earlier discussion.

Other land Resources

The proposal will have no impact on land resources.

Water Quality & Stormwater

The development will not impact on any existing stormwater infrastructure or the quality of water leaving the site generally.

Soils, soil erosion

No soil disturbance will occur that will require the implementation of specific controls as part of this development.

Air and microclimate

The proposal is not anticipated to have any impact of air and/or microclimate.

Flora and Fauna Trees

There is no vegetation that will be impacted as a result of the development. There are no expected impacts on fauna as a result of the development.

Waste

There are no waste impacts expected as a result of the development.

Natural hazards - Flooding and Bushfire

Refer to earlier discussion regarding flooding. Whilst the rear of the site is mapped as bushfire prone land (as a result of the riverine vegetation corridor), the development will not result in any bushfire risks or concerns.

Technological Hazards

Refer to land contamination discussion earlier in this report.

Safety, security and crime prevention

Refer to earlier discussion.

Socio-economic impact in locality

The proposed development will help to stimulate the local economy through opportunities for continued business development and employment. The development is consistent with Councils aim to generate activity and business within this area of the city.

Site design and internal design

It is satisfied that the development has been appropriately designed with regard to the context of the footpath area and its relationship with the existing building, the shopfront and the cantilevered awning.

Services

The development will not require the provision of additional services as the blinds will be manually operated. As identified earlier, the development will not impact on utilities located within the footpath area.

Overlooking - overshadowing

The proposed development will have no impact in terms of overlooking or overshadowing.

Landscaping

The site does not currently contain any existing vegetation or landscaping. Whilst no landscaping is required, the use of the blinds and other furnishings within the footpath areas for dining will contribute aesthetically to the locality.

Construction

Construction impacts will be temporary and will be limited to minor installation works. Conditions will require appropriate approvals to work within the road reserve.

The Principles of Ecologically Sustainable Development

The proposal is considered to comply with the four principles of Ecologically Sustainable

Development such as inter-generational equality and conservation of biological diversity and ecological integrity.

Section 4.15(1)(c) - The suitability of the site for the development

This assessment report has demonstrated that the development is compatible with adjoining developments and land uses and that there are no site constraints that would render the site unsuitable for the proposed development. An assessment of the development against the applicable codes of the Wagga Wagga Development Control Plan 2010 demonstrates that the proposed development will not cause significant adverse impacts on the existing built environment, or local character and amenity.

Section 4.15(1)(d) - any submissions made in accordance with this Act or the Regulations

Referrals

This application has been assessed by relevant Council planning, engineering, environmental, and other technical officers as required. The application is supported, subject to conditions.

Notification

In accordance with the Council's advertising and notification provisions outlined in Section 1.10 of the Wagga Wagga Development Control Plan 2010 the application was notified to surrounding adjacent landowners from 11 to 18 June 2020.

Advertising

In accordance with the Council's advertising and notification provisions outlined in Section 1.10 of the Wagga Wagga Development Control Plan 2010 the application was not required to be advertised.

Submissions

No submissions were received

Section 4.15(1)(e) - the public interest

The public interest is a broad consideration relating to many issues and is not limited to. Taking into account the full range of matters for consideration under Section 4.15 of the Environmental Planning and Assessment 1979 (as discussed within this report) it is considered that approval of the application is the public interest.

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

On 21st November 2017, certain zones of the WWLEP 2010 achieved Biodiversity Certification under the *Biodiversity Conservation Act 2016*, including all Business, Industrial, Residential and Special Infrastructure Zones that were in place at the time of the making of the *Biodiversity Conservation Act 2016*. The subject site, other than the Harris Road reserve, falls within an area subject to the Biodiversity Certification Order.

The effect of the Biodiversity Certification, as set out by Section 8.4 of the *Biodiversity*

Conservation Act 2016 is that:

An assessment of the likely impact on biodiversity of development on biodiversity certified land is not required for the purposes of Part 4 of the Environmental Planning and Assessment Act 1979.

A consent authority, when determining a development application in relation to development on biodiversity certified land under Part 4 of the Environmental Planning and Assessment Act 1979, is not required to take into consideration the likely impact on biodiversity of the development carried out on that land.

Council Policies

Policy 046 - Processing Development Applications lodged by Councillors, staff and individuals of which a conflict of interest may arise, or on Council owned land.

No declaration has been made that would require action under this policy.

Contributions Plans

Section 7.11/7.12 of the EP&A Act and Council's Contributions Plan 2006-2019/Levy Contributions Plan 2006 enables Council to levy contributions, where anticipated development will or is likely to increase the demand for public facilities.

A Section 7.12 contribution is note as the cost of works is less than \$100,000.

Section 64 of the Local Government Act, 1993, Section 306 of the Water Management Act 2000 as well as the City of Wagga Wagga's Development Servicing Plan for Stormwater 2007 and/or City of Wagga Wagga Development Servicing Plan for Sewerage 2006 enable Council to levy developer charges based on the increased demands that new development will have on sewer and/or stormwater.

Stormwater

The proposed development will not result in any increase in hardstand area on the site. Therefore, a s64 stormwater levy will not be imposed.

Sewer

The proposed development will not result in any increase demand on Council's sewer infrastructure. Therefore, a s64 sewer levy will not be imposed.

Conclusion

The development is considered to be satisfactory based on the foregoing assessment. The proposal complies with the requirements of the *Environmental Planning and Assessment Act 1979* and Council Policies. No objections to the proposal were received.

Recommendation

It is recommended that application number DA20/0196 for Drop down blinds to existing cantilevered awning be approved, subject to the following conditions:-

CONDITIONS

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

<p>Report Prepared & approved by:</p>  <p>Cameron Collins Development Assessment Coordinator</p> <p>Date: 24/6/2020</p>	<p>Report Reviewed by:</p>  <p>Steven Cook Senior Town Planner</p> <p>Date: 24/6/20</p>
---	--