

Item 8: Development

8.1 DA0087/2022 - Demolition of Dwelling and Construction of Food and Drink Premises (KFC) at 33-35 Horatio Street, Mudgee

REPORT BY THE PLANNING COORDINATOR AND MANAGER PLANNING
 TO 16 AUGUST 2023 ORDINARY MEETING
 GOV400103, DA0087/2022

RECOMMENDATION

That Council:

- A. receive the report by the Planning Coordinator and Manager Planning on DA0087/2022 - Demolition of Dwelling and Construction of Food and Drink Premises (KFC) at 33-35 Horatio Street, Mudgee; and
- B. approve DA0087/2022 - Demolition of Dwelling and Construction of Food and Drink Premises (KFC) at 33-35 Horatio Street, Mudgee subject to the following conditions and statement of reasons:

APPROVED PLANS

1. The development is to be carried out in accordance with the following plans endorsed with Council's Stamp as well as the documentation listed below, except as varied by the conditions listed herein and/or any plan notations:

Title / Name:	Drawing No / Document Ref	Revision / Issue:	Date:	Prepared by:
Proposed Site Plan	TP100	P2	7 June 2023	Baldasso Cortese P/L
Proposed Landscape Plan	TP110	P2	16 December 2021	Baldasso Cortese P/L
Proposed Floor Plan	TP200	P2	7 June 2023	Baldasso Cortese P/L
Proposed Roof Plan	TP201	P1	27 August 2021	Baldasso Cortese P/L
Proposed Elevations Sheet 1	TP300	P2	7 June 2023	Baldasso Cortese P/L
Proposed Elevations Sheet 2	TP301	P2	7 June 2023	Baldasso Cortese P/L
Proposed 3D Views	TP302	P1	27 August 2021	Baldasso Cortese P/L
Signage Details	TP400	P1	27 August 2021	Baldasso Cortese P/L
Civil Drawings	TX15361.00-C1.00, C1.01, C2.00 and C3.00	A	30 August 2021	Triaxial Consulting
Statement of Environmental Effects	-	002	September 2021	Atlas Environment and Planning
Waste Management Plan	-	-	-	Applicant

Title / Name:	Drawing No / Document Ref	Revision / Issue:	Date:	Prepared by:
Statement of Heritage Impact	9188	3	24 August 2021	Heritage 21
Odour Assessment Report	-	-	19 November 2021	The Odour Unit
Illuminated Signage General Assessment	-	-	6 November 2021	C-Level Design and Engineering
Social Impact Assessment	660.30161.000000-R01	v1.1	14 December 2021	SLR Consulting Australia Pty Ltd
Noise Impact Assessment	212155R	-	November 2021 – Addendum July 2023	Spectrum Acoustics
Peer Review and Supplementary Traffic Advice	2204876.01FA	-	15 July 2022	McLaren Traffic Engineering
Further Supplementary Traffic and Parking Advice	220486.03FA	-	31 January 2023	McLaren Traffic Engineering
Flood Modelling Report	TX15361.00.rpt.jd-Rev 4	REV4	6 July 2023	Triaxial Consulting Ltd

- For clarity, this development consent provides approval for the demolition of a dwelling house and outbuildings, tree removal, construction of a food and drink premises, advertising signage and ancillary works.

Note: This approval does not give consent to the proposed ‘banner’ signs located within the front setback.

GENERAL

- This consent does not permit commencement of any site works. Works are not to commence until such time as a Section 68 Approval for drainage works and Construction Certificate for building works have been obtained, along with the appointment of a Principal Certifier.
 - All building work must be carried out in accordance with the *Building Code of Australia*.
- Note: Prescribed condition pursuant to section 4.17(11) of the Environmental Planning and Assessment Act 1979.*
- All demolition works are to be carried out in accordance with AS 2601-2001 “Demolition of structures”, with all waste being removed from the site. Hazardous waste such as asbestos cement sheeting etc, shall be handled, conveyed and disposed of in accordance with guidelines and requirements from SafeWork NSW. Disposal of asbestos material at Council’s Waste Depot requires prior arrangement for immediate landfilling.
 - All earthworks, filling, building, driveways or other works are to be designed and constructed (including stormwater drainage if necessary) to ensure that at no time any ponding of stormwater occurs on the subject site or adjoining land as a result of this development. Design must also ensure that no diversion of runoff onto other adjacent properties occurs.
 - The footpath and driveway levels are not to be altered outside the property boundary without Council's permission. Driveways installed over public footpaths must match the existing footpath profile.

8. **Fill placed in residential or commercial lots shall be compacted in accordance with *AS3798-2007 Guidelines on Earthworks for Commercial and Residential Developments*.**
9. **The only waste derived fill material that may be received at the development site must be:**
 - a) **Virgin excavated natural material, within the meaning of the Protection of the Environment Operations Act 1997; and**
 - b) **Any other waste-derived material the subject of a resource recovery exemption under cl.91 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material.**
10. **Notwithstanding the approved plans the structure is to be located clear of any easements and/or 1.5 metres from any water and sewer mains in accordance with Council Policy.**
11. **All external colour and finishes are to consist of non-reflective materials and colours.**
12. **Mature landscaping shall be provided to the development in accordance with the approved plan and following requirements:**
 - a) **All open space areas on the site are to be landscaped with mature or advance plant species (minimum pot size of 200mm for shrubs and 100 Litre bags for trees). Landscaping enhances the development for acoustic and visual privacy, as well as shade and blends the development into the established streetscape and neighbourhood.**
 - b) **The replacement street trees are to be mature species of minimum 200 Litre bags and must be protected via appropriate tree barriers at all times until established.**
 - c) **Landscaping must be water efficient.**
 - d) **Landscaping utilises, where practicable, endemic species which are appropriate for the site.**
 - e) **Landscaping allows for continued casual surveillance of the internal driveway, car parking areas and street, where practicable, from within the development.**
 - f) **Landscaping softens the visual impacts of the parking spaces.**
 - g) **Landscaping shall not provide opportunities for concealment of people.**
 - h) **Landscaping is to be provided to the development prior to occupation.**
 - i) **Landscaping shall be maintained at all times. Should any planting die or be removed for any reason, it shall be replaced by a like replacement planting.**

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

13. **Prior to issue of any Construction Certificate, the signage plan is to be amended to reduce the overall height of the pylon 'KFC bucket' advertising sign to be no greater than 7.0m.**
14. **Prior to issue of any Construction Certificate, the proposed 'banner signage' as shown within the submitted signage and site plan are to be removed.**
15. **Prior to issue of any Construction Certificate, the detailed signage design must include reference to the installation of 'dimnable drivers' in accordance with the Lighting Assessment provided by C-Level Design and Engineering dated 6 November 2021.**

16. Finished floor heights of the proposed building and car parking finished surface levels and internal car park kerb heights are to be in accordance with that specified within the Flood Modelling Report (Revision 4 dated 6th July 2023) prepared by Triaxial Consulting Pty Ltd. The car parking area shall be designed and constructed to allow overland flow through the site as specified within the abovementioned Flood Modelling report by Triaxial Consulting Pty Ltd. Full details are to be submitted to and approved by the Certifier (i.e. Council or Private Certifier), prior to the issue of the Construction Certificate.
17. Prior to release of any Construction Certificate, approval pursuant to Section 68 of the Local Government Act, 1993 to carry out water supply, stormwater and sewerage works is to be obtained from Mid-Western Regional Council.
18. Prior to issue of any Construction Certificate, a Liquid Trade Waste approval is to be obtained from Mid-Western Regional Council.
19. The developer shall obtain a Certificate of Compliance under the Water Management Act 2000, from Council prior to issue of any Construction Certificate.
Note: Refer to Advisory Notes in relation to payment of contributions to obtain a Certificate of Compliance.
20. Prior to the issue of a Construction Certificate, the developer shall pay a long service levy at the prescribed rate to either the Long Service Levy Corporation or Council, for any work costing \$250,000 or more.
Note: The amount payable is currently based on 0.25% of the cost of work. This is a State Government Levy and is subject to change.
Note: Council can only accept payment of the Long Service Levy as part of the fees for a Construction Certificate application lodged with Council. If the Construction Certificate is to be issued by a Private Certifier, the long service levy must be paid directly to the Long Service Levy Corporation or paid to the Private Certifier.
21. In accordance with the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 and the Mid-Western Regional Contributions Plan 2019, a levy based on the value of works shall be paid to Council in accordance with this condition for the purpose of local infrastructure, prior to issue of any Construction Certificate.

The value of works is to be calculated in accordance with Section 2.9.3 and the procedure outlined in Section 4.3 of the Contributions Plan. A report regarding value of works and any necessary certification is to be submitted to Council. Council will calculate and advise of the levy amount following submission of the documents.

Note: based on the proposed cost of works being \$1,800,000.00, it is estimated the contribution amount will be \$18,000.00.
Note: the contribution amount will be adjusted by the Consumer Price Index, if not paid in the same financial year the development consent was issued.
Note: Mid-Western Regional Contributions Plan 2019 is available for perusal at Council's Administration Centre at 86 Market Street, Mudgee or on Council's website www.midwestern.nsw.gov.au under Council Documents/Strategies and Plans.
22. A 2 metre high acoustic barrier/ fence shall be erected on the eastern, western and southern boundaries of the site along with a 300mm high bund constructed adjacent to the drive-through area of the development. The material of the barrier/fence shall have a minimum surface density of 15kg/square metre. Acceptable forms of

construction are: lapped and capped timber palings with 12.5mm thick palings and 25% overlap each side, or masonry of single 110mm brick in accordance with the Noise Impact Assessment report prepared by Spectrum Acoustics (Amended July 2023). Details of the acoustic barrier shall be submitted to the Principal Certifier prior to issue of any Construction Certificate.

23. The mechanical plant area is to be fitted with acoustic louvres to comply with Table 14 of the Noise Impact Assessment report by Spectrum Acoustics (Amended July 2023). Details of the louvres shall be approved by the acoustic consultant and submitted to the Principal Certifier prior to the issue of any Construction Certificate.
24. The proposed parapet walls adjacent to the kitchen exhaust shall be 4.5m high above ground. This shall be confirmed by the Principal Certifier on the relevant plans prior to the issue of any Construction Certificate.
25. The main kitchen exhaust hood (H-01) shall be designed to include an exhaust air emission control system with provision for ozone dosing. The dosing shall be dosed at a location that maximises contact time between the ozone and exhaust airstream (minimum 2 seconds). Details of the design shall be submitted to the Principal Certifier prior to the issue of any Construction Certificate.
26. The registered proprietor of the land shall prepare a Plan of Management for the development including the car parking area and drive through facilities.

The Plan of Management shall set out all required operational parameters including, but not limited to the following:

- Details of the on-site management of all deliveries and waste collection services associated with the development.
- Deliveries and waste collection must occur outside normal operating hours (excluding the evening period of 10pm to 7am), must not occur during the typical peak periods of midday to 1pm and 5pm to 7pm, daily. Deliveries and waste collection services occurring during business hours shall be managed by appropriately trained staff to ensure no conflict with other vehicles occurs.
- Maintenance checks of the noise mitigation measures required in accordance with the approved Noise Impact Assessment.
- Maintenance checks of the signage output levels in accordance with the Illuminated Signage General Assessment.
- Daily litter checks of the site, street frontage and line of sight from the premises.
- Regular maintenance of landscaping and a replacement planting program for dying plants.
- Staff training on safety procedures and protocols including waste and traffic management, site maintenance, illumination of signage, crime or antisocial behaviour, and complaints handling.
- Details of the on-site management of the drive through and car parking areas during times of peak demand. Queuing of vehicles within the drive through must not be allowed to exceed 9 vehicles at any time and queued vehicles must not impact upon the orderly operation of Horatio Street.
- The Plan of Management is to include details pertaining to the management of queue lengths through the use of dedicated waiting bays or other available car parking spaces on-site.
- The use of appropriately trained staff to “marshal” vehicles in the drive thru queues and car parking areas and if necessary close the drive thru entry until such time as queues have returned to an acceptable level.

- Queued vehicles must under no circumstances be allowed to affect the driveway entry to the site or extend onto the Horatio Street.

The plan of management shall be submitted to and approved by Council prior to the issue of any Construction Certificate.

27. All building work is to comply with the requirements of the Access to Premises Standard. Details of compliance is to be indicated on plans and submitted for assessment with the Construction Certificate.
28. All finished surface levels shall be shown on the plans submitted for any Construction Certificate.
29. The design, construction and fit out of any proposed kitchen, cool room/s and associated structures must be constructed in accordance with the relevant requirements of:
 - a) *Food Act 2003*;
 - b) *Food Regulation 2015*;
 - c) *Food Standards Australia and New Zealand – Food Standards Code 2003*;
 - d) *AS 4674-2004 for Design, Construction and Fit out of Food Premises*;
 - e) *AS 1668.2-2012 – The use of ventilation and air conditioning in buildings*; and
 - f) *The Building Code of Australia*.

Full details are to be submitted for approval to the Certifier (i.e. Council or a private Certifier) prior to the issue of any Construction Certificate.

The information that will need to be submitted, includes, but is not limited to, the location of hand-basins, wash-up sinks, any exhaust hoods, floor finishes, wall finishes and ceiling finishes.

30. A channelised right turn lane (CHR) on the eastbound approach of Horatio Street generally in accordance with drawing titled Intersection Design Plan, numbered C3.00 Issue A, prepared by Triaxial Consulting (dated 30 August 2021) is to be constructed to TfNSW satisfaction and completed prior to the commencement of any construction works.

As road works are required on Horatio Street, road works will be subject to the developer entering into the Works Authorisation Deed (WAD) with TfNSW prior to the commencement of any construction. TfNSW will exercise the function of the road authority under Section 64 of the Roads Act 1993, in addition to its concurrence with respect to a classified road.

Note: Conditions of Consent do not guarantee TfNSW's final consent to the specific road work, traffic control facilities and other structures or works, for which it is responsible, on the road network. TfNSW must provide a final consent for each specific change to the classified (State) road network prior to the commencement of any work. The WAD process, including acceptance of design documentation and construction, can take time. The developer should be aware of this and allow sufficient lead time within the project development program to accommodate this process. It is therefore suggested that the developer work through this process as soon as possible with the TfNSW.

All road works under the WAD shall be completed prior to issue of any Construction Certificate associated with the approved development.

All works associated with the subject development shall be undertaken at full cost to the developer and at no cost to TfNSW or Council.

The access driveway and layback are to be constructed in accordance with Mid-Western Regional Council Engineering standards, match existing road levels and must not adversely interfere with existing road drainage.

31. A detailed engineering design is to be submitted to and approved by Council prior to the issue of a S.138 Roads Act Approval and prior to the issue of any Construction Certificate for the Development. The engineering design is to comply with Council's Development Control Plan and the Standards referenced within Appendix B and D.

A S.138 Roads Act Approval is required for but not limited to the following civil works:

- a) *Commercial vehicular crossings / driveways in accordance with Council's Access to Properties Policy.*
- b) *Removal of any redundant vehicle crossings, laybacks and subsequent rectification works.*
- c) *Construction of a 2.5m wide reinforced concrete shared path from the eastern boundary of Lot 2 DP 743615 to the kerb return in Lawson Street (a distance of approximately 98 metres).*
- d) *Relocation and replacement of any affected street trees or services.*
- e) *Reinstatement and turfing of all disturbed footway areas.*

Note: no works can commence prior to the issue of the S138 Roads Act Approval.

32. Prior to the issue of any Construction Certificate for the development, application shall be made to Council under Section 68 of the Local Government Act 1993 to carry out Stormwater Drainage Works.

A detailed engineering design is to be submitted to and approved by Council prior to the issue of a Section 68 approval. The engineering design is to comply with Council's Development Control Plan and the Standards referenced within Appendix B and D.

The work required for but not limited to the following civil works:

- a) *Full details (civil / structural) of the proposed reinforced concrete box culvert units and base slab.*
- b) *Design and certification of the box culvert units and base slab with respect to the expected vehicular loading from the largest expected service delivery / waste collection vehicle.*
- c) *Details of the proposed pits at the culvert entry and connection to the existing culvert under Horatio Street.*
- d) *All culvert units and base slabs shall have a design life of not less than 100 years.*

The Section 68 application shall be considered and approved by Council prior to the release of any Construction Certificate for the development.

33. A Drainage Report prepared in accordance with the Institution of Engineers publication Australian Rainfall and Run-off shall be submitted to and approved by the Certifier (i.e. Council or a private Certifier) prior to the issue of the Construction Certificate. The drainage report and design must comply with the following requirements:

- a) Drainage design for the proposed below ground detention system must be accompanied by fully detailed runoff calculations and a structural design prepared and certified by a suitably qualified professional Engineer.
- b) Drainage design must also incorporate suitable and appropriate water quality controls to prevent pollution or contamination of downstream environments.
- c) Drainage report and design must demonstrate that stormwater runoff from the site is not increased beyond the existing undeveloped state up to and including a 1.5/5/20/50/100 year event.
- d) Drainage design must ensure that no stormwater runoff is permitted to discharge over adjoining properties. Discharge of runoff onto adjoining properties and any works associated with the control of stormwater discharge over and adjoining property must not occur without the consent of the owner of any affected property.

34. An Erosion and Sediment Control Plan is to be submitted to and approved by the Certifier (i.e. Council or a private Certifier) prior to the issue of a Construction Certificate. The Erosion and Sediment Control Plan for the development is to be prepared and implemented in accordance with the LANDCOM guidelines and requirements as outlined in the latest edition of "Soils and Construction – Managing Urban Stormwater". Points to be considered include, but are not limited to:

- a) Saving available topsoil for reuse in the revegetation phase of the development;
- b) Using erosion control measures to prevent on-site damage;
- c) Rehabilitating disturbed areas quickly; and
- d) Maintenance of erosion and sediment control structures.

35. Details of the internal circulating driveway, car parking spaces and waiting bays are to be submitted to and approved by the Certifier (i.e. Council or a private Certifier), prior to the issue of any Construction Certificate. These details shall comply with the requirements of AS/NZS 2890.1:2004 – Parking Facilities – Part 1: Off-street Car Parking and the relevant conditions of this development consent.

The plans shall include the provision of the following:

- A total of 23 car parking spaces.
- A minimum of 1 disabled car parking space.
- The provision of 2 marked drive thru waiting bays (spaces 22 and 23).

36. Consent from Council must be obtained for all works within the road reserve pursuant to Section 138 of the Roads Act 1993, prior to the issue of any Construction Certificate. The accesses are to be designed and constructed in accordance with Council's Access to Properties Policy.

37. Prior to the issue of any Construction Certificate, evidence that the lots making up the subject site have been consolidated into a single allotment and registered with NSW Land Registry Services is to be submitted to Council and the Certifier (if applicable).

The lots to be consolidated into a single parcel include:

- a) Lot 2 DP743615
- b) Lot 3 DP743615

38. Vehicular entrances comprising kerb laybacks (where roll kerb and gutter does not exist) and concrete footway crossings are to be provided to each lot at a suitable location. These should be constructed in accordance with Aus-Spec #1 and Council's "Access to Properties" Policy.

Concrete must not be poured until the excavation, formwork and reinforcing has been inspected by Council. The contractor/owner must arrange an inspection by contacting Council's Operations Department between 8.00am and 4.30pm Monday to Friday, giving at least twenty four (24) hours' notice.

Failure to have the work inspected may result in the access being removed and reconstructed at the contractors / owners expense.

39. A copy of the Contractor's public liability insurance cover for a minimum of \$20,000,000 (twenty million dollars), is to be provided to Council, prior to issue of any Construction Certificate for all work on public land or infrastructure. The insurance cover shall include the following:
- a) Mid-Western Regional Council is to be indemnified against any works carried out by the contractor.
 - b) Public Liability Insurance is to include Mid-Western Regional Council as an interested party.
 - c) The copy of the Contractor's public liability insurance cover is to include the Certificate of Currency.
40. In accordance with the requirements of Essential Energy, the following shall be demonstrated on the plans, prior to issue of any Construction Certificate:
- a) The Applicant must meet the requirements of AS2067 for the substation in relation to fire safety. Clearances will be dependent on the building classification. Minimum separation / clearances and segregation for fire risk from the substation to any building, fence, planting, landscaping, retaining walls or other development must be maintained at all times. Refer to AS2067, Essential Energy's policy *CEOM7098 Distribution Underground Design Construction Manual* and the latest industry guideline currently known as *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*. The Applicant may want to seek assistance with this from a fire engineer to determine they meet the required clearances.
 - b) The easement area for the substation must remain clear of all obstructions. Surface treatment should be grass or wood chip material only and must be lower than the concrete plinth of the substation.
 - c) The easement area must be accessible at all times by Essential Energy (24 hours a day / 7 days a week).
 - d) Any proposed driveway access and/or exit (concrete crossovers) must remain at least 1.0 metre away from any electricity infrastructure (power pole, streetlight) at all times, to prevent accidental damage.
 - e) Prior to any demolition works commencing, any service line/s to the properties must be disconnected.
 - f) The Applicant will also need to engage the services of an Accredited Service Provider to ensure adequate provision of power is available to the development in accordance with industry standards.

PRIOR TO THE COMMENCEMENT OF BUILDING WORKS

41. No building works shall commence until a Construction Certificate has been issued and the applicant has notified Council of:
- a) the appointment of a Principal Certifying Authority and
 - b) the date on which work will commence.

Such notice shall include details of the Principal Certifying Authority and must be submitted to Council at least two (2) days before work commences.

42. Prior to the commencement of construction work impacting traffic on Horatio Street (HW18), the proponent is to contact the TfNSW Road Access Unit at road.access@transport.nsw.gov.au to determine if a Road Occupancy Licence (ROL) is required. In the event an ROL is required, the proponent is to provide the consent number in the ROL application. Please note that up to 10 working days is required for ROL applications to be assessed and processed. See TfNSW website for further information: <https://roads-waterways.transport.nsw.gov.au/business-industry/road-occupancy-licence/index.html>.

Adequate safety measures are to be implemented on the road network for construction traffic. Heavy vehicle movements should be limited during school peak periods.

43. A sign must be erected in a prominent position on any work site on which involved in the erection or demolition of a building is carried out;
- stating that unauthorised entry to the work site is prohibited, and
 - showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
 - the name, address and telephone number of the principal certifying authority for the work,
 - The sign shall be removed when the erection or demolition of the building has been completed.
44. The site shall be provided with a waste enclosure (minimum 1800mm X 1800mm X 1200mm) that has a lid or secure covering for the duration of the construction works to ensure that all wastes are contained on the site. The receptacle is to be emptied periodically to reduce the potential for rubbish to leave the site. Council encourages the separation and recycling of suitable materials.

NOTE: ALL WASTE GENERATED FROM THE CONSTRUCTION PROCESS IS TO BE CONTAINED ON-SITE

45. The licensed demolition contractor and/or principal contractor must comply with the following specific requirements in respect of the proposed demolition works:-
- Demolition work is not be undertaken until:
 - Council has been provided with a copy of any required Hazardous Substances Management Plan;
 - The licensed demolition contractor and/or principal contractor has inspected the site and is satisfied that all measures are in place to comply with the provisions of such Plan;
 - The removal, handling and disposal of any asbestos material (in excess of 10m²) is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by WorkCover NSW, and in accordance with the requirements of WorkCover NSW, the Work Health and Safety Act 2011 and Australian Standard 2601-2001
 - All asbestos and other hazardous materials are to be appropriately contained and disposed of at a facility holding the appropriate license issued by the NSW Environmental Protection Agency;
 - Seven working days' notice in writing is to be given to Council prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor.

46. The removal of any asbestos material (less than 10m²) during the demolition phase of the development is to be in accordance with the requirements of the Workcover Authority and disposed of at an approved waste facility.
47. If the work involved in the erection/demolition of the building;
- a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - b) building involves the enclosure of a public place
- A hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.
48. Prior to the commencement of works on site, the applicant shall advise Council's Operations Department, in writing, of any existing damage to Council property.
49. The developer shall be responsible for all costs incurred in the necessary relocation of any services affected by the required construction works. Council and other service authorities should be contacted for specific requirements prior to commencement of any works.
50. Any necessary alterations to, or relocations of, public utility services to be carried out at no cost to Council and in accordance with the requirements of the relevant authority including the provision of easements over existing and proposed public infrastructure.
51. Runoff and sediment erosion controls shall be installed prior to commencement of works with the development site to the satisfaction of the Certifier (i.e. Council or the Principle Certifier) and incorporate:-
- a) diversion of uncontaminated up-site runoff around cleared and/or disturbed areas and areas to be cleared and/or disturbed;
 - b) sediment control fences at the downslope perimeter of the cleared and/or disturbed area to prevent sediment and other debris escaping from the land to pollute any stream or body of water; and
 - c) maintenance of all erosion control measures at maximum operational capacity until the land is effectively rehabilitated and stabilized beyond the completion of construction.

DURING WORKS

52. Demolition or Construction work noise that is audible at other premises is to be restricted to the following times:
- Monday to Saturday - 7.00am to 5.00pm
- No construction work noise is permitted on Sundays or Public Holidays.
53. All plumbing and drainage work must be carried out by a licensed plumber and drainer and must comply with the requirements of the Plumbing & Drainage Act 2011 and the Plumbing Code of Australia.
54. All building work must be carried out in accordance with the provisions of the National Construction Code, the Environmental Planning & Assessment Act 1979 and Regulations and all relevant Australian Standards.

55. All mandatory inspections required by the Environmental Planning & Assessment Act and any other inspections deemed necessary by the Principal Certifying Authority being carried out during the relevant stage of construction.
56. Prior to the pouring of any in-situ concrete, the building/s shall be set-out by a registered land surveyor in the position as approved by Council.

A copy of the identification survey shall be provided to the Principal Certifier at time of any pier/footing/slab inspection.
57. Should any contaminated, scheduled, hazardous or asbestos material be discovered before or during construction works, the applicant and contractor shall ensure the appropriate regulatory authority (e.g. Office of Environment and Heritage (OEH), SafeWork NSW, Council, Fire and Rescue NSW etc) is notified, and that such material is contained, encapsulated, sealed, handled or otherwise disposed of to the requirements of such Authority.
58. In the event of any Aboriginal archaeological material being discovered during earthmoving/construction works, all work in that area shall cease immediately and the Office of Environment and Heritage (OEH) notified of the discovery as soon as practicable. Work shall only recommence upon the authorisation of the OEH.
59. The development site is to be managed for the entirety of work in the following manner:
 - a) Erosion and sediment controls are to be implemented to prevent sediment from leaving the site. The controls are to be maintained until the development is complete and the site stabilised with permanent vegetation;
 - b) Appropriate dust control measures;
 - c) Construction equipment and materials shall be contained wholly within the site unless approval to use the road reserve has been obtained;
 - d) Toilet facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
60. The adjustment of existing services or installation of new services and meters, as required, in compliance with *Australian Standard 3500: National Plumbing and Drainage Code*. All costs associated with this work shall be borne by the developer.
61. All public footways, foot paving, kerbs, gutters and road pavement damaged during the works are to be restored to match existing conditions at the Developer's / Demolisher's expense.
62. Transportation of contaminated fill or materials from the site on public roads must be carried out in accordance with the requirements of *Australian Dangerous Goods Code and Australian Standard 4452 Storage and Handling of Toxic Substances*. This must include relevant incident management strategies for transportation on public roads.
63. The civil works associated with the S68 and S138 approvals are to be inspected by Council to monitor compliance with the consent and the relevant standards of construction, encompassing the following stages of construction:
 - a) Installation of sediment and erosion control measures;
 - b) Water and sewer line installation prior to backfilling;
 - c) All box culverts / drainage prior to backfill;
 - d) Formwork and steel in place, prior to pouring of any concrete and
 - e) Practical Completion.

64. The developer is to grant Council unrestricted access to the site at all times to enable inspections or testing of the water, sewer and stormwater works.
65. The developer is to extend and meet the full cost of water reticulations to service the development plus the cost of connecting to existing services. All water supply work is required to be carried out in accordance with the requirements of Mid-Western Regional Council (as the Water Supply Authority under the *Local Government Act 1993*) and in accordance with the National Specification – Water Supply Code of Australia.

Note: Council does not permit other bodies to insert new junctions into 'live' water and/or sewer mains. Please contact Council's Operations Water and Wastewater Department by calling ☎ 1300 765 002 or 02 6378 2850 or by emailing council@midwestern.nsw.gov.au to obtain a quote for the connection of sewer (Private Works Order).

66. The developer is to extend and meet the full cost of sewer reticulations to service the development plus the cost of connecting to existing services. All sewerage work is required to be carried out in accordance with the requirements of Mid-Western Regional Council (as the Water Supply Authority under the *Local Government Act 1993*) and in accordance with the National Specification – Sewerage Code of Australia.

Note: Council does not permit other bodies to insert new junctions into 'live' water and/or sewer mains. Please contact Council's Operations Water and Wastewater Department by calling ☎ 1300 765 002 or 02 6378 2850 or by emailing council@midwestern.nsw.gov.au to obtain a quote for the connection of sewer (Private Works Order).

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

67. Prior to the occupation of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the erection of the building.
68. Prior to occupation or the issue of the Occupation Certificate the owner of the building must cause the Principal Certifier to be given a fire safety certificate (or interim fire safety certificate in the case of a building or part of a building occupied before completion) in accordance with Section 41 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 for each measure listed in the schedule. The certificate must only be in the form specified by Section 86 of the Regulation. A copy of the certificate is to be given to the Commissioner of the New South Wales Fire Brigade and a copy is to be prominently displayed in the building.
69. Prior to use of the development and/or issue of an Occupation Certificate, a satisfactory final inspection report from the Council must be received by the Certifier, verifying that all works have been completed in accordance with the relevant Section 68 (*Local Government Act 1993*) approval/s.
70. Prior to use of the development and/or issue of an Occupation Certificate, all works included in the Trade Waste Approval are to be completed.
71. Prior to issue of the Occupation Certificate, a Certificate of Compliance is to be provided to the Principal Certifier for the illuminated signage to certify that the signage is installed in accordance with AS4282-2019, will not have a negative impact on surrounding properties in accordance with the recommendations of the Lighting Assessment provided by C-Level Design and Engineering dated 6 November 2021.

72. A Certificate of Compliance is to be provided to the Principal Certifier for the mechanical exhaust system to certify that the installation complies with AS1668.1 & AS1668.2 as per the Building Code of Australia Volume 1 Part F4.12.
73. All landscape works are to be undertaken in accordance with the approved landscape plan and conditions of Development Consent, prior to use of the development and/or issue of an Occupation Certificate.
74. Prior to commencement of use of the development and/or issue of an Occupation Certificate, all car parking and associated driveway works are to be completed in accordance with the relevant *Section 138 Roads Act* approval/s.
75. A 'No Stopping' zone must be provided to the east of the egress driveway on the southern side of Horatio Street to maximise sight distance for vehicles exiting the subject site with approval to be sought from the Local Traffic Committee prior to issue of any Occupation Certificate.
76. Two (2) waiting bays must be appropriately signposted / line marked to Council's satisfaction, prior to issue of the Occupation Certificate.
77. Prior to the issue of an Occupation Certificate, easements benefiting Council, including associated Section 88B instruments, are to be created over any existing or newly constructed drainage components located within the subject property.
78. Following completion of the development, work-as-executed plans (WAE) are to be provided to Council in the following formats:
 - a) PDF; and
 - b) Dwg format or "AutoCAD Compatible"
 - c) MapInfo tab files with individual layers, supplied in individual tables

All work-as-executed plans shall bear the Consulting Engineer's or Consulting Surveyor's certification stating that all information shown on the plans is accurate.

To accompany the WAE Drawings, Council also requires the completion of Asset Data Excel Spreadsheets (to be provided by Council) prior to the issue of the Occupation Certificate.

OPERATIONAL / ONGOING

79. The facility shall only operate from Monday to Sunday - 10.30am to 10.00pm only.
Note: All illuminated signage on the site must be turned off at strictly 10.00pm.
80. Deliveries must only occur outside the daytime peak periods of:
 - a) Midday to 1pm and 5pm to 7pm, daily.
81. No deliveries or waste collections are permitted to occur during the evening / night-time period between 10pm and 7am, daily.
82. All vehicles are required to enter and leave the site in a forward direction at all times. Signage to this effect is to be appropriately located within the site. Signage identifying the driveway and car park as low speed environments is also to be appropriately located within the site.
83. All loading and unloading in connection with the premises shall be carried out wholly within the site.

84. All car parking spaces, loading and unloading areas, vehicle manoeuvring and driveway areas must not be used for the storage of any goods or materials and must be available for their intended use at all times.
85. All line-marking for the on-site car parking spaces and footpath areas are to be maintained in a visible condition, at all times.
86. For every 12 month period after the issue of the Final Fire Safety Certificate the owner/agent of the building must provide the Council and the Commissioner of NSW Fire Brigades with a copy of an Annual Fire Safety Statement certifying that each specified fire safety measure is capable of performing to its specification.
87. Where any essential services are installed in the building a copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of Fire and Rescue NSW. A further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
88. No display or sale of goods is to take place from public areas fronting the premises.
89. All general waste generated by the proposed development shall be disposed of to a suitably licenced waste facility able to accommodate such wastes.
90. Garbage areas are to be adequately screened from public view with an opaque fence and/or adequate landscaping. All waste must be secured in enclosed containers at all times.
91. All exterior lighting associated with the development shall be designed and installed so that no obtrusive light will be cast onto any adjoining property or roadways, in accordance with *Australian Standard 4282 "Control of the Obtrusive Effects of Outdoor Lighting"*.
92. There being no interference with the amenity of the neighbourhood by reason of the emission of any "offensive noise", vibration, smell, fumes, smoke, vapour, steam, soot, ash or dust, or otherwise as a result of the proposed development.

Note: If Council receives odour complaints, a field-based investigation study shall be completed by a suitably qualified odour control engineer consisting of the components specified on page 22 of the Odour Assessment Report by The Odour Unit dated 19 November 2021 at full cost to the developer.
93. The development is to be maintained in a clean and tidy manner, at all times.
94. All approved signage is to be maintained in good condition at all times.
95. The signage is to be securely affixed and is not to flash, move or be objectionably glaring.
96. Measures, such as raised kerb edges or bollards, are to be installed and maintained around all approved landscape areas in order to prevent vehicles driving over them. Landscaping is to be maintained for the life of the development.

COUNCIL ADVISORY NOTES

1. This development consent requires a Certificate of Compliance under the *Water Management Act 2000* to be obtained prior to the issue of any Construction Certificate.

A person is to apply to Mid-Western Regional Council, as the water supply authority, for a Certificate of Compliance pursuant to section 305 of the *Water Management Act 2000*.

Please be advised that as a precondition to the granting of a Compliance Certificate, the following is to occur:

- a) A monetary contribution in accordance with the following schedule of Contributions must be paid in full (including indexation, where applicable);

Section 64 Contributions			
Commercial Restaurant (Per 100m² floor area)			
	<i>ET/Unit</i>	<i>Value 22/23</i>	<i>273m² Floor Area Proposed</i>
Water Headworks	0.8	\$6,478.57	\$21,213.19
Sewer Headworks	0.8	\$3,547.20	\$9,683.86
Total Headworks			\$30,897.05

- b) The adjustment of existing services or installation of new services and meters, as required, in compliance with Australian Standard 3500: National Plumbing and Drainage Code. All costs associated with this work shall be borne by the developer.

Note - Section 64 Developer Contributions are subject to Consumer Price Index increase at 1 July each year. Please contact Council's Planning and Development Department regarding any adjustments.

2. The removal of trees within any road reserve requires the separate approval of Council in accordance with the policy "Tree Removal and Pruning - Public Places".
3. The land upon which the subject building is to be constructed may be affected by restrictive covenants. This approval is issued without enquiry by Council as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this approval. Persons to whom this approval is issued must rely on their own enquiries as to whether or not the building breaches any such covenant.
4. The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Under this Act, all relevant parties must be in agreement prior to the erection of any approved dividing fence/s under this consent. Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences. If there is a neighbour dispute about the boundary fence and you are seeking mediation, you may contact the Community Justice Centre, or if legal advice or action is required, you may contact the Chamber Magistrate.
5. Division 8.2 of the Environmental Planning and Assessment Act 1979 (EP&A Act) gives you the ability to seek a review of the determination. This request is made to Council and must be made within 6 months after the date on which you receive this

notice. The request must be made in writing and lodged with the required fee; please contact Council's Development Department for more information or advice.

6. If you are dissatisfied with this decision section 8.7 of the EP&A Act gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice, pursuant to section 8.10(1)(b).
7. To ascertain the extent to which the consent is liable to lapse, refer to Section 4.53 of the EP&A Act.

ESSENTIAL ENERGY ADVISORY NOTES

1. If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.
2. Any existing encumbrances/easements in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with.
3. In addition, Essential Energy's records indicate there is electricity infrastructure located within the properties and within close proximity of the properties. Any activities within these locations must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.
4. Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW).
5. Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines and Code of Practice – Work near Underground Assets.

STATEMENT OF REASONS

The determination decision was reached for the following reasons:

1. The proposed development generally complies with the requirements of the applicable environmental planning instruments and Mid-Western Regional Development Control Plan 2013.
2. The proposed development is considered to be satisfactory in terms of the matters identified in Section 4.15 of the Environmental Planning & Assessment Act 1979.
3. The matters raised within submissions have been addressed in the following manner:
 - Conditions have been imposed to limit the proposed advertising signage, the design of the access and stormwater management over the site, hours of construction and operation for the premises, and requirement for a new shared path to be installed within Horatio Street.
 - Independent specialist reports have been provided to satisfactorily address the following key concerns:

- **Traffic and parking;**
- **Noise impacts;**
- **Odour impacts;**
- **Illumination;**
- **Waste management;**
- **Heritage impacts;**
- **Crime and antisocial behaviour; and**
- **Stormwater drainage and flooding.**

Executive summary

OWNER/S:	Diamond 7 Pty Ltd
APPLICANT:	Diamond 7 Pty Ltd
PROPERTY DESCRIPTION:	33-35 Horatio Street, Mudgee
PROPOSED DEVELOPMENT:	Demolition of dwelling and construction of food and drink premises (KFC)
ESTIMATED COST OF DEVELOPMENT:	\$1.8 Million
REASON FOR REPORTING TO COUNCIL:	Greater than 7 objections received
PUBLIC SUBMISSIONS:	72 Objections - 28 template submissions and 44 unique submissions

Council is in receipt of Development Application DA0087/2022 that seeks approval for the demolition of a dwelling and outbuildings, and the construction of a Food and Drink Premises (KFC), to be located at 33-35 Horatio Street MUDGEES NSW 2850, legally described as Lot 2 and Lot 3 DP 743615 which has a total area of 2,226m².

The site is located with frontage to Horatio Street and also benefits from rear lane access to Lyons Lane, approximately 520m from the intersection of Church and Horatio Streets, Mudgee. The site is immediately surrounded by residential dwellings, including one (1) heritage listed dwelling found to the rear of the subject site. The subject site is also located in the Heritage Conservation Area of Mudgee.

The application was advertised and neighbour notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days, ending 1 October 2021.

The applicant has submitted a number of specialised reports to support the application and in order to respond to a number of community concerns. The most recent peer-reviewed report related to traffic which was provided to Council and Transport for NSW. Transport for NSW has since provided a final referral response (March 2023), providing recommended conditions, based on the concept road works and access design upgrades proposed to Horatio Street (a state classified road).

In summary, the proposed development has been assessed in accordance with Council's DCP and the LEP, and has considered all referral responses and community submissions. A merits-based assessment finds that the proposed development is generally consistent with Council's current planning controls. Where variations to Council's requirements have been proposed, conditions are recommended for Council's consideration.

The application has been referred to Council for consideration as it exceeds staff's *Delegation of Authority*, in that more than seven (7) objections have been made against the development.

A total of 72 objections have been received, noting 28 were provided in a template letter format with 44 unique submissions provided.

As a result of a full merits based assessment of the proposal, the application is recommended for approval subject to conditions.

Disclosure of Interest

Nil

Detailed report

Development Application DA0087/2022 seeks approval for the demolition of a dwelling, outbuildings and tree removal, and the construction of a Food and Drink Premises (KFC), to be located at 33-35 Horatio Street, Mudgee NSW 2850, legally described as Lot 2 and Lot 3 DP 743615 which has a total area of 2,226m².

Subject Site

The subject site has access to the classified road network known as Horatio Street to the north, being the primary spine road connecting the east and west areas of Mudgee. The subject site contains two (2) lots and is currently occupied by a single storey brick dwelling and attached carport, with an existing driveway crossover provided to Horatio Street.

A number of outbuildings are located to the south-eastern rear corner of the land which also benefits from access to a dead end, unformalised (part gravel only), narrow rear laneway known as Lyons Lane. The laneway provides rear access to eight (8) other existing residential lots.

The subject site also contains an open stormwater drain running to a culvert under Horatio Street which predominately bisects Lot 3 from the north-western corner to the south-eastern corner of the lot.

A variety of non-native mature vegetation are planted over the site and one (1) large eucalyptus variety is located at the western front corner of the land. An avenue of Council street trees are also provided at the frontage of the site.

The existing development which immediately surrounds the subject site consists of single storey residential dwellings of various ages and one (1) heritage listed dwelling is located to the south of the land, fronting Inglis Street.

Other existing development also located nearby with frontage to Horatio Street include:

- A funeral service provider with chapel facility is located two (2) lots to the west of the site.
- The Mudgee Corner Store Café is located 330m to the west of the site.
- McDonalds is located 500m to the west of the site.
- The Horatio Motel is located 150m to the east of the site.
- Tyre Power Mudgee and Mudgee Toyota is located 300m to the east of the site.

Figure 1 provides the site location within Horatio Street below:



Figure 1: Site Locality Plan

Proposed Development

The proposed development involves the following:

1. Consolidation of the title from two (2) lots into one (1) lot.
2. Demolition of an existing single storey brick dwelling with attached carport and separate garage.
3. Removal of nine (9) nominated trees/shrubs within the site, three (3) golden elm street trees within Council's footpath along with earthworks and stormwater construction works to prepare the site for the development.
4. Construction of a food and drink premises (KFC), situated 9.7m from the front boundary of Horatio Street including:
 - a) an overall building height of 6 metres;
 - b) total floor area of 273m² and 40 seats;
 - c) a single lane drive-thru on the south-western side of the building incorporating a digital menu board and ordering / speaker facilities;
 - d) 23 onsite parking spaces (including 1 accessible) and one (1) internal loading bay; and
 - e) Signage includes one (1) illuminated pylon sign within the front setback having an overall height of 8.5 metres, low level non-illuminated advertising banners within the front setback, entry and exit directional signage along with the illuminated business signage on the northern, eastern and western sides of the building.

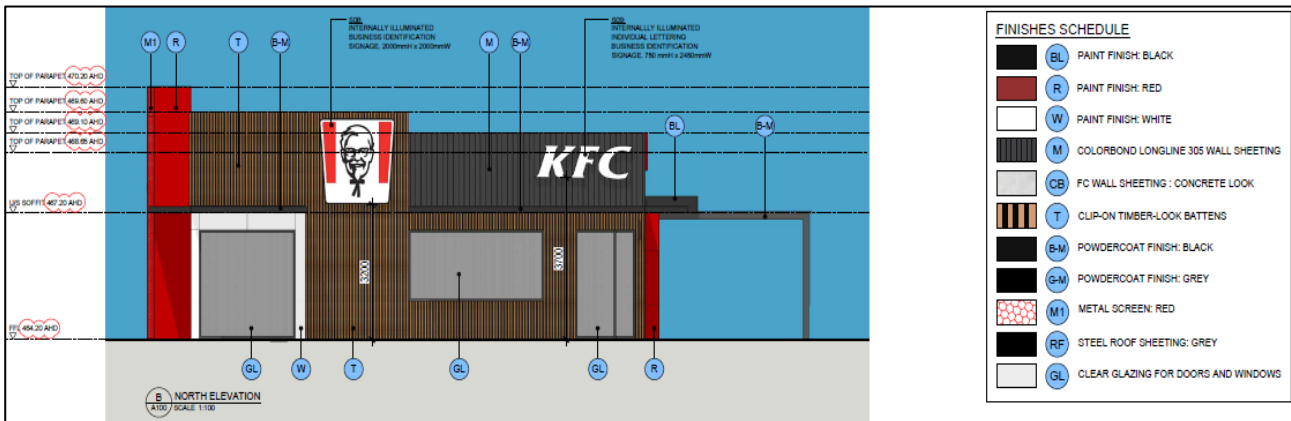


Figure 3: Northern Elevation Plan (Horatio Street View)

LEGISLATIVE REQUIREMENTS

Environmental Planning and Assessment Act 1979

Designated Development

The development proposal is not considered to be Designated Development, in accordance with Schedule 3 of the Environmental Planning and Assessment Regulation 2021 (EP&A Regs).

Integrated Development

The development proposal is not considered to be Integrated Development, in accordance with section 4.46 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

It is important to note that in accordance with section 4.46(3), which states:

Development is not integrated development in respect of the consent required under section 138 of the Roads Act 1993 if, in order for the development to be carried out, it requires the development consent of a council and the approval of the same council.

On the basis of the above, the subject application is not integrated development as the proposed works on the classified public road (Horatio Street) will also require the approval of Council, with concurrence required from Transport for NSW (TfNSW) in accordance with Section 138(2) of the *Roads Act 1993*.

The Development Application was subsequently referred to TfNSW for concurrence in relation to the proposed works within the classified public road network and in accordance with 2.119 and 2.122 of *State Environmental Planning Policy (Transport and Infrastructure) 2021*, and Section 3.15 and 3.16 of the *State Environmental Planning Policy (Industry and Employment) 2021*. Compliance with the State Planning Policies is discussed later in this report.

ASSESSMENT

The application has been assessed in accordance with **Section 4.15** of the *Environmental Planning & Assessment Act 1979*. The main issues are addressed below as follows.

4.15(1)(a) Requirements of Regulations and Policies

(i) *Do any environmental planning instruments (SEPP, REP or LEP) apply to the land to which the Development Application relates?*

STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

The proposed development will require the removal of vegetation ancillary to the carrying out of the development to be located in the SP3 Tourist Zone. The removal of the trees within the site

will be considered as part of the subject application. Therefore, no further consideration of this SEPP is considered necessary.

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

The proposal does not involve development that requires the issue of BASIX certificate for the building. Therefore, no further consideration of this SEPP is considered necessary.

STATE ENVIRONMENTAL PLANNING POLICY (EXEMPT AND COMPLYING DEVELOPMENT CODES) 2008

The proposed development is not impacted by any requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

The proposed development is not impacted by any requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

STATE ENVIRONMENTAL PLANNING POLICY (INDUSTRY AND EMPLOYMENT) 2021

The proposed development involves Advertising or Signage which will front Horatio Street, a classified road network, and is proposed at a height of more than 8 metres above ground (section 3.15 of the SEPP) and is therefore captured by Chapter 3 Advertising and Signage of the SEPP.

The application was referred to TfNSW in accordance with Section 3.15 and section 3.16 of the SEPP.

Figure 4 below demonstrate the proposed business advertising and signage to be displayed that will also include illuminated signage within 250m of the classified road network.



Figure 4: 3D Perspective and Signage (Horatio Street and entry to building from eastern elevation)

The Heritage Assessment and Social Impact Assessment recommends that the proposed pylon signage to be located within the front setback be of a reduced height so as to further minimise

impacts on views from within the Mudgee HCA and item I81 (a heritage listed house located at 8 Inglis Street to the rear of the site), however, the reports do not specify or recommend a reduced height to mitigate such impacts.


The plans submitted with the application provide an overall height of the pylon sign being 8.5m with illumination. Furthermore, 2 x 'Garden Banners' are proposed within the front setback which will have an overall height of 2m.

An assessment of the proposed advertising signage and business identification signage is provided below and whilst there are non-compliances identified, it is considered that the signage proposed can be conditioned to achieve an acceptable outcome for the site.

Requirement	Compliance	Comment
1 Character of the area		
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	No – condition.	<p>The proposed signage is considered to be generally typical of commercial/corporate signage.</p> <p>Further from the subject site at a distance of some 300m east and 500m west, existing commercial and industrial developments are found which includes corporate buildings such as Mudgee Toyota, Tyre Power and McDonalds.</p> <p>It is noted that the overall height of pylon signs associated with these businesses are <u>not</u> 8.5m high. McDonalds, for example, has an approved pylon sign at 7m and the existing KFC pylon sign within Church Street is also approved at 7m.</p> <p>Therefore, a condition is recommended to reduce the height of the proposed pylon sign to 7m prior to issue of any construction certificate.</p>
2 Special areas		
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	No – condition.	<p>Whilst the building has been sited with a larger front setback from Horatio Street, the proposed 'KFC bucket' corporate pylon sign is proposed at 8.5m and is to be illuminated.</p> <p>This is not in keeping with the established character of the area and the heritage assessment and Social Impact Assessment also includes a recommendation to reduce the overall height from 8.5m but does not specify a reduced height.</p> <p>As a result, an assessment of the height</p>

		<p>proposed at 8.5m, location within the immediate front setback and overall form of the proposed signage in this location is considered to detract from the established residential area immediately surrounding the subject site.</p> <p>A reduced overall height of the pylon sign is recommended at 7m remaining consistent with existing businesses in the area.</p> <p>Further, it is recommended that the proposed 'banner' signs be removed from the proposed front garden bed area to reduce visual clutter from multiple advertising signage on the classified road network.</p> <p>Conditions have been imposed accordingly.</p>
<p>3 Views and vistas</p>		
<p>Does the proposal obscure or compromise important views? Does the proposal dominate the skyline and reduce the quality of vistas? Does the proposal respect the viewing rights of other advertisers?</p>	<p>Yes</p>	<p>The proposal, subject to a reduced pylon sign height to 7m, is not considered to obstruct or compromise any significant views or vistas in this location of Horatio Street.</p>
<p>4 Streetscape, setting or landscape</p>		
<p>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? Does the proposal contribute to the visual interest of the streetscape, setting or landscape? Does the proposal reduce clutter by rationalising and simplifying existing advertising? Does the proposal screen unsightliness? Does the proposal protrude above buildings, structures or tree canopies in the area or locality. Does the proposal require ongoing vegetation management?</p>	<p>No - condition.</p>	<p>The proposed advertising signage is standardised corporate signage that reflects the KFC brand. In the proposed location, surrounded by residential dwellings, the business identification signage located on the elevations of the building is considerate to be appropriately setback on the site to ensure that this does not dominate the streetscape.</p> <p>The proposed pylon signage however is not supported at 8.5m high and the 2m high garden banner signage is also not supported in its current form or location as mentioned within this report.</p> <p>Conditions are recommended to mitigate the impacts of multiple signs and the overall height of the pylon sign which also remains consistent with the Heritage Report and Social Impact Assessment prepared to</p>

		<p>support the proposed development.</p> <p>Overall, it is considered that the proposed development will remain 'recognisable' to the general public and the number of advertising signs proposed by the applicant can be reduced.</p>
5 Site and building		
<p>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p> <p>Does the proposal respect important features of the site or building, or both? Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p>	<p>No - condition.</p>	<p>The proposed signage is not considered to be compatible with the scale, proportion or characteristics of the site owing to the location and surrounding existing single storey dwellings. The signage is proposed to align with the corporate nature of the development and to ensure it is visible to passing traffic in Horatio Street.</p> <p>At a height of 8.5m however, this will result in the pylon sign being visually dominant in this location and is not sympathetic to the established residential character of the area.</p> <p>A condition is recommended to reduce the height of the pylon sign to 7m.</p>
6 Associated devices and logos with advertisements and advertising structures		
<p>Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</p>	<p>Illumination proposed – condition.</p>	<p>The proposed signage is to include fixed illuminated logos and advertising with a lighting assessment provided in support of the application stating that the 'maximum outputs of the signage are within tolerances noted in Tables 3.3 and 3.5 of AS4282-2019'.</p> <p>However, the report also includes recommendations that 'dimmable drivers' be installed to add greater onsite flexibility and in order to reduce the effects of 'over-illumination', that the signs outputs be independently dimmed to a level that is customised to the site.</p> <p>A condition is recommended to mitigate the impacts of illumination in this location including 'dimmable drivers' and also to mitigate any potential light spill to residential areas during operations.</p>
7 Illumination		
<p>Would illumination result in</p>	<p>No -</p>	<p>Whilst there has been no overall</p>

<p>unacceptable glare? Would illumination affect safety for pedestrians, vehicles or aircraft?</p> <p>Recommended conditions of consent require the signs to comply with relevant Australian Standards.</p> <p>Would illumination detract from the amenity of any residence or other form of accommodation?</p> <p>Can the intensity of the illumination be adjusted, if necessary?</p> <p>Is the illumination subject to a curfew?</p>	<p>condition.</p>	<p>assessment provided on potential glare impacts as a result of the development, a specific lighting assessment for the signage has concluded that the illumination of the signage maximum outputs are within tolerances noted in tables 3.3 and 3.5 of AS4282-2019 and dimmable drivers are recommended for this site.</p> <p>In comparing the existing Mudgee KFC site approvals that do not appear to require dimmable drivers be installed for the illuminated signage (see night time photo below), it is considered that this recommendation will achieve an improved outcome for the Horatio Street site and reduce potential light spill impacts to surrounding properties.</p>  <p>Conditions are recommended accordingly to ensure dimmable drivers are installed, compliance with the Australian Standard is achieved and also requiring all illumination be turned off at the time of store closure (10pm).</p>
<p>8 Safety</p>		
<p>Would the proposal reduce safety for pedestrians, particularly children, by obscuring sightlines from public areas? Would the proposal reduce safety for any public road?</p>	<p>No - condition.</p>	<p>The proposed signage is not generally considered to impact on the safety of pedestrians or obscure sightlines however, the banner signage within the garden area in the front setback is considered to cause visual clutter of advertising signage and may impact on road safety, and therefore the banner signage is not supported in this location.</p>

		A condition is recommended to remove the banner signs from the frontage of the site.
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STATE ENVIRONMENTAL PLANNING POLICY NO 65—DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

The proposal does not involve a Residential Apartment Development nor is impacted by any other requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

STATE ENVIRONMENTAL PLANNING POLICY (PLANNING SYSTEMS) 2021

The proposed development is not State or Regionally Significant Development nor is impacted by any other requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

STATE ENVIRONMENTAL PLANNING POLICY (PRECINCTS—REGIONAL) 2021

The proposed development is not impacted by any requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

STATE ENVIRONMENTAL PLANNING POLICY (PRIMARY PRODUCTION) 2021

The proposed development is not impacted by any requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Pursuant to section 4.6(2) of the Policy, no preliminary contamination report is required, and has therefore not been provided for assessment as the land concerned is not captured by subclause (4) of the SEPP. A site inspection and a search of Council's records did not reveal any potentially historic contaminating activities upon the site, with the current use being for residential accommodation. The change of use relates to a commercial purpose and therefore it is not considered that any further assessment in accordance with the contaminated land planning guidelines is necessary.

STATE ENVIRONMENTAL PLANNING POLICY (RESOURCES AND ENERGY) 2021

The proposed development is not impacted by any requirements of this Policy. Therefore, no further consideration of this SEPP is considered necessary.

STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

Essential Energy

Pursuant to Section 2.48, the development will have an impact on electricity power lines and a new substation is proposed within the front setback of the site, adjacent to the entry point to the development.

A referral to Essential Energy was therefore undertaken and the following comments provided are to be included within any notice of determination issued:

1. *The Plans provided indicate an "electrical substation" at the front of the property:*

- a) *Minimum separation / clearances and segregation for fire risk from the proposed substation to any building, fence, planting, landscaping, retaining walls or other development must be maintained at all times. Refer to AS2067, Essential Energy's policy CEOM7098 Distribution Underground Design Construction Manual and the latest industry guideline currently known as ISSC 20 Guideline for the Management*

of Activities within Electricity Easements and Close to Infrastructure.

- b) *Design, construction and installation of the proposed substation must meet the requirements of Essential Energy's Contestable Work process. Refer Essential Energy's Contestable Works Team for requirements via email contestableworks@essentialenergy.com.au.*
2. *Any proposed driveway access and/or exit (concrete crossovers) must remain at least 1.0 metre away from any electricity infrastructure (power pole, streetlight) at all times, to prevent accidental damage.*
 3. *Prior to any demolition works commencing, any service line/s to the properties must be disconnected. The Applicant will also need to engage the services of an Accredited Service Provider to ensure adequate provision of power is available to the development in accordance with industry standards.*

Notwithstanding the above comments, there is concern raised by staff in relation to a substation being placed within the front setback of the site and the inability to provide suitable screening measures to Horatio Street, noting the abovementioned clearance distances required by Essential Energy.

Council has no policy requirements in relation to substations being located within the front setback of new development and therefore it is deemed generally acceptable in the circumstances of the case as there are limited other siting options that will not impact on parking or traffic movements through the site.

Transport for NSW

Pursuant to Section 2.119 of the SEPP (Transport and Infrastructure), the development is proposed with frontage (and direct access) to a classified road network known as Horatio Street (HW18). Further, the development is identified as a traffic generating development pursuant to Section 2.122 and Schedule 3 of the SEPP (Transport and Infrastructure).

The development application was referred to TfNSW in accordance with the SEPP. Deficiencies were identified in the documentation provided for assessment along with concerns raised in relation to the impact of the development on the classified road network of Horatio Street relating to queuing of vehicles, impacts to existing on-street parking and access to existing residential driveways in this location.

After a significant number of further information requests and issues identified with the submitted traffic assessment provided, a final response was received based on the updated traffic surveys and additional information as requested by Council and TfNSW.

The response from TfNSW dated 21 March 2023 provided no objection to the proposal, with the previous concerns having been addressed by the applicant, subject to the following recommended conditions:

1. *A channelised right turn lane (CHR) on the eastbound approach of Horatio Street generally in accordance with drawing titled Intersection Design Plan, numbered C3.00 Issue A, prepared by Triaxial Consulting (dated 30 August 2021) is to be constructed to TfNSW satisfaction and completed prior to the commencement of any construction works.*
2. *As road works are required on Horatio Street, road works will subject to the developer entering into the Works Authorisation Deed with TfNSW prior to the commencement of any construction. TfNSW will exercise the function of the road authority under Section 64 of the Roads Act 1993, in addition to its concurrence with respect to a classified road.*

Comment: It is requested that Council advise the developer that the Conditions of Consent do not guarantee TfNSW's final consent to the specific road work, traffic control facilities and other structures or works, for which it is responsible, on the road network. TfNSW must provide a final consent for each specific change to the classified (State) road network prior to the commencement of any work.

The WAD process, including acceptance of design documentation and construction, can take time. The developer should be aware of this and allow sufficient lead time within the project development program to accommodate this process. It is therefore suggested that the developer work through this process as soon as possible with the TfNSW.

3. *All road works under the WAD shall be completed prior to commencement of any construction works associated with the approved development.*
4. *All works associated with the subject development shall be undertaken at full cost to the developer and at no cost to TfNSW or Council, and to Council's requirements.*
5. *The access driveway and layback are to be constructed in accordance with Mid-Western Regional Council Engineering standards, match existing road levels and must not adversely interfere with existing road drainage.*
6. *A 'No Stopping' zone must be provided to east of the egress driveway on the southern side of Horatio Street to maximise sight distance for vehicles exiting the subject site with approval to be sought from the Local Traffic Committee prior to issue of any Occupation Certificate (interim or final).*
7. *Two (2) waiting bays must be appropriately signposted / line marked to Council's satisfaction.*
8. *Deliveries must occur outside the typical peak periods of midday to 1pm and 5pm to 7pm daily.*
9. *Prior to the commencement of construction work impacting traffic on Horatio Street (HW18), the proponent is to contact the TfNSW Road Access Unit at road.access@transport.nsw.gov.au to determine if a Road Occupancy Licence (ROL) is required. In the event an ROL is required, the proponent is to provide the consent number in the ROL application. Please note that up to 10 working days is required for ROL applications to be assessed and processed. See TfNSW website for further information: <https://roads-waterways.transport.nsw.gov.au/business-industry/road-occupancy-licence/index.html>.*
10. *Transportation of contaminated fill or materials from the site on public roads must be carried out in accordance with the requirements of Australian Dangerous Goods Code and Australian Standard 4452 Storage and Handling of Toxic Substances. This must include relevant incident management strategies for transportation on public roads.*

The final response from TfNSW has been reviewed by Councils technical engineering staff and recommended conditions of consent have been provided to ensure the proposed development does not have a significant adverse impact on the road network or adjoining properties. This will include the requirement for a Plan of Management to be prepared to manage traffic onsite, when required.

MID-WESTERN REGIONAL LOCAL ENVIRONMENTAL PLAN 2012 (MWRLEP 2012)

The following clauses of Mid-Western Regional Local Environmental Plan 2012 have been assessed as being relevant and matters for consideration in assessment of the Development Application.

Clause 1.2 Aims of Plan

The application is not considered to be contrary to the relevant aims and objectives of the plan.

Clause 1.4 Definitions

The proposal is defined in accordance with the MWRLEP 2012 as a:

food and drink premises - means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or café
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

Note: Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary.

Clause 2.2 Zoning of Land to Which Plan Applies

The land is zoned SP3 Tourist and is therefore subject to the Plan.

Clause 2.3 Zone objectives and Land Use table

The land is zoned SP3 Tourist pursuant to MWRLEP 2012. The proposal, being a food and drink premises is permissible with consent in the zone and complies with the relevant objective of the SP3 Zone which is to:

- provide for a variety of tourist-oriented development and related uses.

The proposal seeks to provide onsite and takeaway food and drink options for the Region which is generally consistent with the SP3 zone objective.

Clause 2.7 Demolition requires development consent

In satisfaction of this clause, the development application seeks approval for the demolition of a dwelling, associated outbuildings and vegetation located over the site. Conditions are able to be provided to address this requirement.

Clause 4.3 Height of buildings

The subject site is not mapped for a maximum height limit however, land to the north and south are mapped with a maximum height limit of 8.5m.

Notwithstanding, the impacts associated with the overall height of the proposed development (6m for the building) on surrounding single storey dwellings has been assessed on its merits in the context of the Heritage Conservation Area of Mudgee and adjacent heritage listed item with no significant adverse impacts expected owing to the large setbacks provided.

Clause 5.4 Controls relating to miscellaneous permissible uses

The proposal does not include any of the listed uses contained under this clause.

Clause 5.10 Heritage Conservation

The proposal includes works involving a site within the Heritage Conservation Area and also adjoins a heritage listed item, identified as I81 (house) under the LEP, consideration must be given to the relevant heritage significance in accordance with Clause 5.10(4).

The provision of Clause 5.10(4) states:

(4) Effect of proposed development on heritage significance. *The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether*

a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

The applicant has submitted a Heritage Assessment Report prepared by Heritage 21 which states the following conclusions and recommendations within section 7 of the report:

7.1 Impact Summary

The NSW Office of Environment & Heritage's guidelines require the following aspects of the proposal to be summarised.¹⁰

7.1.1 Aspects of the proposal which respect or enhance heritage significance

In our view, the following aspects of the proposal would respect the heritage significance of the subject site, the Mudgee heritage conservation area and heritage item in the vicinity:

- The proposed setback of the development would be consistent with the setback of adjacent properties;
- It would not alter the historic subdivision pattern in the Mudgee locality;
- The proposal would have minimal impact on primary views to and from heritage items in its vicinity;
- The proposal would not result in the demolition of heritage significant fabric;
- The proposed colour scheme identified would result in a neutral heritage impact on the Mudgee HCA and heritage item in the vicinity;
- The design, bulk and form of the proposed commercial structure would not dominate the local streetscape and would be considered sympathetic within the context of the Mudgee HCA, nearby heritage items as well as the Horatio Street streetscape;
- Landscaping – including tall plantings – at the rear boundary of the site would reduce the potential visual impact of the proposed development on view lines to and from the heritage item at the rear of the site as well as from within the Mudgee HCA; and
- The proposal would attract the community to the area and would therefore facilitate the ongoing community engagement with the Mudgee HCA and nearby heritage items.

7.1.2 Aspects of the proposal which could have detrimental impact on heritage significance

Additionally, recommendations are provided below as supplementary mitigation measures to further limit heritage impact.

From a heritage perspective, the visual impact of the proposed 'KFC pylon sign' may result in a negative heritage impact on the Mudgee HCA and surrounding heritage items. Heritage 21 recommends that the proposed 'KFC Pylon Sign' at the front of the site should be reduced in height. This would reduce the visual impact of the proposed development on the Mudgee HCA and nearby heritage items.

7.1.3 Sympathetic alternative solutions which have been considered and discounted

Heritage 21 provided heritage advice to the applicant which has been incorporated in the final proposal as described in Section 5.0 and which includes:

- The use of sympathetic colours and materials would reduce potential visual impacts on the Mudgee HCA and nearby heritage items as part of the proposed works. It would also ensure that the proposal remains sympathetic to the established character of the HCA;
- The design, shape and bulk of the proposed works should be modified so that it would not result in a proposal that would be considered visually obtrusive within the Horatio Street Streetscape and Mudgee HCA;
- The proposed landscaping should be modified so that it provides a buffer between the subject site and nearby heritage items. This would reduce potential visual impacts as a result of the proposed works.

Heritage 21 provided heritage advice to the applicant which has not been incorporated in the final proposal as described in Section 5.0. This regarded:

- Heritage 21 recommends that the proposed 'KFC Pylon Sign' at the front of the site should be reduced in height. would reduce the visual impact of the proposed development on the Mudgee HCA and nearby heritage items. This was dismissed due to the desire to provide adequate signage for the commercial development; and
- An alternate pitched roof form that is sympathetic with nearby structures would reduce the obtrusiveness of the proposed development and would lessen the impact on the Mudgee HCA and nearby heritage items. This was dismissed due to a desire to ensure the commercial development adopts the designs used for KFC commercial developments.

7.2 General Conclusion

Heritage 21 is therefore confident that the proposed development complies with pertinent heritage controls and would engender minimal impact on the heritage significance of the subject site, the Mudgee heritage conservation area and the heritage item in the vicinity. We therefore recommend that Mid-Western Regional Council view the application favourably on heritage grounds.

The development application was also referred to Council's Heritage Advisor with the following comments noted:

The proposal is for demolition of a brick house with a flat roof dating probably from the 1970s and construction of a fast food outlet with parking and landscaping. The site lies within the Mudgee Heritage Conservation Area and abuts the rear boundary of a locally listed item at 6-8 Inglis Street. The application includes a professionally written Statement of Heritage Impact.

The existing house on the site is a reasonable example of its style, but again it does not contribute to the significance of the conservation area. Hence there is no objection on heritage grounds to its demolition. The heritage issue is whether the proposed new development will detract from the heritage significance of the area.

The conservation area comprises a commercial part, effectively the Mudgee CBD, and a residential part. The existing buildings in the vicinity of the subject site are houses, (but the zoning is SP3, Tourist.) The house to the east of the subject site is on the eastern boundary of the conservation area and is arguably contributory, but sites to the north and west are vacant or occupied by houses that would be classed as neutral. This part of the conservation area does not generally contribute to its overall heritage significance.

The proposed building clearly reads as a branded fast food outlet. The design makes some concessions to the setting, being set back in the middle of the site with some recessive colours and materials, as well as the bright red and white, and rather simple landscaping to screen it from its neighbours and soften the visual impact slightly. But it will necessarily be rather more noticeable in the streetscape than the house it will replace.

Consequently, it must be said that it will have an adverse heritage impact; but given the limited heritage value of the immediate precinct, that impact will be minor. There is no objection to the proposal on heritage grounds.

In consideration of the report provided by Heritage 21 and the referral response of Council's Heritage Advisor, it is considered that in general, the proposed development will not have a detrimental impact on the heritage conservation area or the heritage listed item however, Council staff are supportive of the recommendation to reduce the overall height of the proposed pylon advertising sign within the front setback as recommended by the report.

The rationale that is provided within the report for why changes were not made to the signage plans being 'due to the desire to provide adequate signage for the commercial development' is not supported by staff on the basis that there is significant signage proposed on the walls of the building that will clearly identify the KFC brand to passing trade. The pylon signage will also remain clearly visible to Horatio Street traffic with a reduced height.

Staff recommend that the pylon sign be reduced from 8.5m to 7m, given the proposed height of the building at 6.0m and all surrounding buildings are single storey. This will reduce the dominance of the proposed pylon signage in the heritage conservation area and also reduce the visual impact on adjoining land.

Further to the above, the limitation to 7m for the pylon sign is consistent with the already approved KFC sign located in Church Street (per DA0177/2014) and the McDonalds pylon signage (per DA133/94).

Clause 5.21 Flood planning

Council's mapping system indicates the site is affected by flooding during the 1% AEP flood event. Accordingly, the development is required to satisfy the provisions of clause 5.21(2) and (3) of the LEP 2012.

The Mudgee Flood Risk Precinct mapping shows the site as being impacted by both medium and high flood risk. The Mudgee Flood Study 2021 also shows the majority of Lot 3 being affected by overland flooding as well as the southern portion of Lot 2. See excerpts from Council's Mapping below.

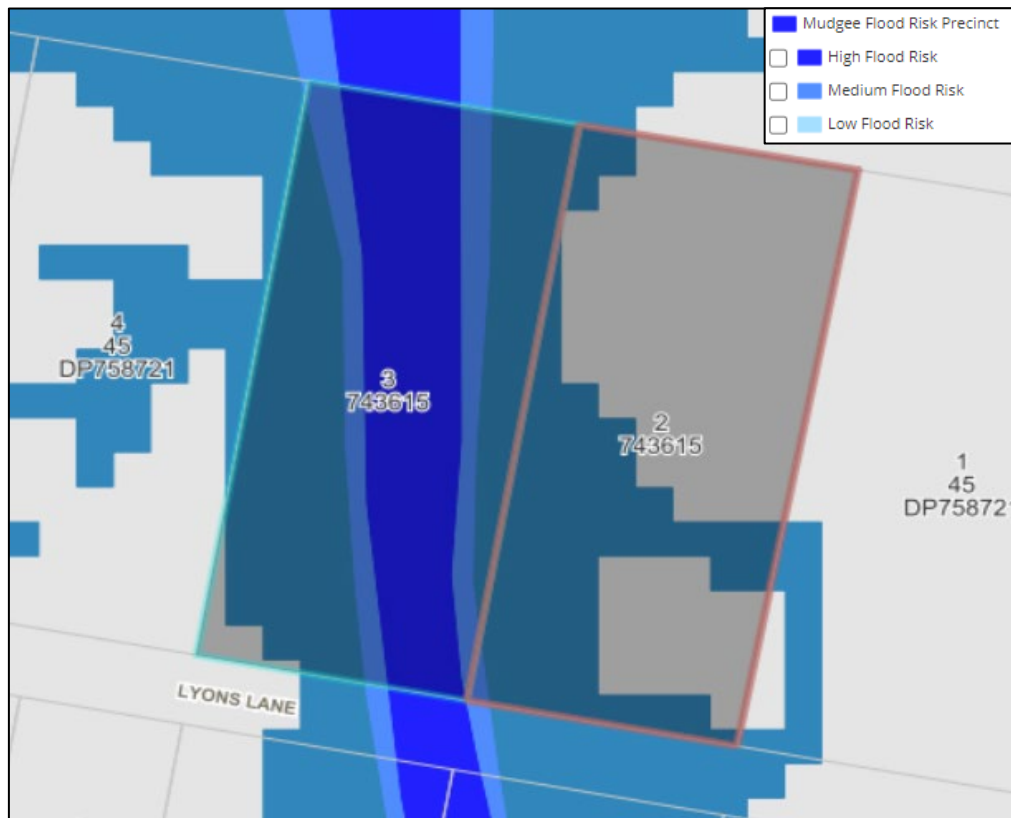


Figure 5: Flood Mapping of the Site (Mudgee Flood Risk Precinct Mapping)

The area of medium and high flood risk reflects the area of open channel currently contained within Lot 3 and is considered to accurately reflect the nature of the concentrated flow within this channel.

Clause 5.21(2) requires Council to be satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

Further, Clause 5.21(3) requires Council to consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,
- (b) the intended design and scale of buildings resulting from the development,
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

The proposal is for a commercial land use, with the majority of the main building being located within the 'medium and low risk' flood precinct of the site. The development seeks to include suitable construction measures to capture and manage the flow of water through the site (under the carpark) in the same location as currently managed, whilst mitigating impacts of flows onto

adjoining land. As a result, there are no specific matters within Clause 5.21 of the LEP 2012 that would preclude the development from proceeding, subject to conditions.

Clause 6.3 Earthworks

The proposal involves extensive earthworks to prepare the site for the development. The provisions under Clause 6.3(3) are provided below:

- (3) *Before granting development consent for earthworks, the consent authority must consider the following matters—*
- a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development;*
 - b) the effect of the development on the likely future use or redevelopment of the land;*
 - c) the quality of the fill or the soil to be excavated, or both;*
 - d) the effect of the development on the existing and likely amenity of adjoining properties;*
 - e) the source of any fill material and the destination of any excavated material;*
 - f) the likelihood of disturbing relics;*
 - g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area; and*
 - h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The proposed development is considered to disrupt (during works) existing drainage patterns in the locality however, once works are completed, the proposal seeks to manage storm and flood waters via controlled engineering design methods. The flood modelling report states that there will be no increased impact to properties as a result of the proposed development.

Further, conditions are recommended to be imposed to manage fill material and potential for unknown relics being uncovered onsite.

Clause 6.4 Groundwater vulnerability

The site is identified as groundwater vulnerable in accordance with Council's mapping. No extensive excavation to the water table level is required to facilitate the proposal and no significant impacts upon those matters contained within clause 6.4(3) is expected as a result of the proposed development. Given the extent of excavation, it is considered that the development would not cause groundwater contamination, adversely affect any groundwater dependent ecosystems, will not cumulatively impact potable water supply, and therefore no special measures, or conditions of consent would be considered necessary.

Clause 6.5 Terrestrial biodiversity

The proposal is not located in any area identified as 'Moderate or High Biodiversity Sensitivity'.

Clause 6.7 Active street frontages

Not Applicable. The site is not located within the area mapped as 'Active street frontage'.

Clause 6.8 Airspace operations – Mudgee Airport

The proposal will not penetrate the relevant height limits for safe operation of the Mudgee Airport.

Clause 6.9 Essential Services

In accordance with clause 6.9 the following essential services that are relevant to the proposal have been considered:

- a) *The supply of water* – reticulated town water supply and a hydrant is located within the frontage of the site (Horatio Street). Appropriate hydrant coverage will be required to service the development and will need to be designed accordingly to achieve compliance for the building class.
- b) *The supply of electricity* - electricity is located within Horatio Street however, the site will require upgrades (including a substation) which has been delineated on plan. Council is not supportive of the proposed location of the substation however, Essential Energy has provided comments in relation to minimum clearance distance around the substation structure. This will limit options to screen or visually improve a substation to better present to the streetscape and there are very limited options to relocate onsite without impacting on parking or onsite vehicle movements. This is deemed acceptable in the circumstances of the case.
- c) *The disposal and management of sewage* - sewer is located within Horatio Street and also runs along the western boundary of the site.
- d) *Stormwater drainage or on-site conservation* - The plans provided show a conceptual drainage plan and the proposed use of a concrete culvert to replace the existing open channel to convey stormwater and overland flood flows which is considered acceptable. The plans provided also specify the provision of detention storage and rainwater tanks along with upgrades to the rear laneway to manage the overland flows currently occurring. Full detail and calculations justifying the proposed detention storage will be required at CC stage. Conditions have been recommended requiring further details of the proposed detention storage methods as well as further supporting calculations.
- e) *Suitable road access* – As noted in this report, concern was previously raised in relation to access and egress from the site, along with the proposed road upgrades in Horatio Street. This matter is further addressed in this report, with no objection provided by Transport for NSW in March 2023.

Clause 6.10 Visually sensitive land near Mudgee

The land is not located within the area identified within the visually sensitive land map.

4.15(1)(a) Requirements of Regulations and Policies

(ii) Draft environmental planning instruments (EPI)

No draft environmental planning instruments apply to the land to which the Development Application relates.

(iii) Any development control plans

MID-WESTERN REGIONAL DCP 2013

An assessment is made of the relevant chapters and sections of this DCP. Those chapters or sections not discussed here were considered not specifically applicable to this application or are discussed elsewhere in this report.

Part 4.4 Signs

As discussed under the provisions of the SEPP for advertising signage, the proposed development includes the following signage:

- 8.5m high illuminated pylon sign in the front setback.
- Banner signage, 2m high x 3.6m long within the front setback.

- Wall signage on the building displaying corporate logos that will also be illuminated.
- Illuminated directional signage.
- Pole supported signage and two (2) digital menu boards within the drive-thru.

In accordance with the provisions of the DCP, the subject site is located within the heritage conservation area (HCA) of Mudgee. The provisions of Part 4.4 for heritage conservation areas require consideration towards the following objectives:

- a) The streetscapes in the business areas of Mudgee, Gulgong, Rylstone and Hargraves are within a heritage conservation and particular attention is paid to the preservation and enhancement of the character and appearance of these areas.*
- b) Corporate identification should be carefully selected and amended where necessary to retain the character of individual buildings and the surrounding locality.*
- c) Generally, signs on individual buildings or within areas of special significance should be discreet and should complement the building or area. An important element of Council's planning policies involves the careful control of all advertisements, and external building colours in the main business areas.*

It is also important to note that the site is located in a commercial zone, being SP3 Tourist and is not zoned Residential. Therefore, the DCP controls for a 'residential area' do not apply to this development.

Based on the plans submitted with the application, the proposal is considered to result in non-compliance with the above DCP 2013 requirements for signage in the Mudgee HCA.

The applicant has submitted plans for signage which is based on the standard corporate requirements of KFC. In the circumstances of the case, and given that McDonalds is located 520m to the west of the site on the corner of Horatio and Church Streets, it is considered that some elements of the signage proposed is able to be supported.

As noted within the assessment under the SEPP for advertising signage, staff do not support the height of the illuminated pylon signage at 8.5m within the front setback or the banner signage, also within the front setback. This is considered to be an excessive amount of signage within the front building line (in addition to the proposed wall signage) that results in visual clutter and does not achieve the objectives of Part 4.4 of the DCP. A reduced height of 7m to the pylon sign is however supported and also aligns with the recommendations of a reduced signage height outlined in the Heritage 21 report and the Social Impact Assessment.

As the proposed building is to be setback 9.7m from Horatio Street and almost 15m from the side boundaries adjoining residential dwellings, it is considered that the primary wall signage will not dominate the streetscape of Horatio Street or significantly impact on surrounding properties. The wall signage proposed on the building is shown below and includes the signage to be illuminated.

Further, an Illumination Report has been provided by the applicant which confirms that with the inclusion of 'dimmable drivers' installed to add greater onsite flexibility and to reduce the effects of 'over-illumination', that the signs outputs be independently dimmed to a level that is customised to the site. A condition is recommended to mitigate the impacts of illumination in this location in accordance with the Illumination Report.

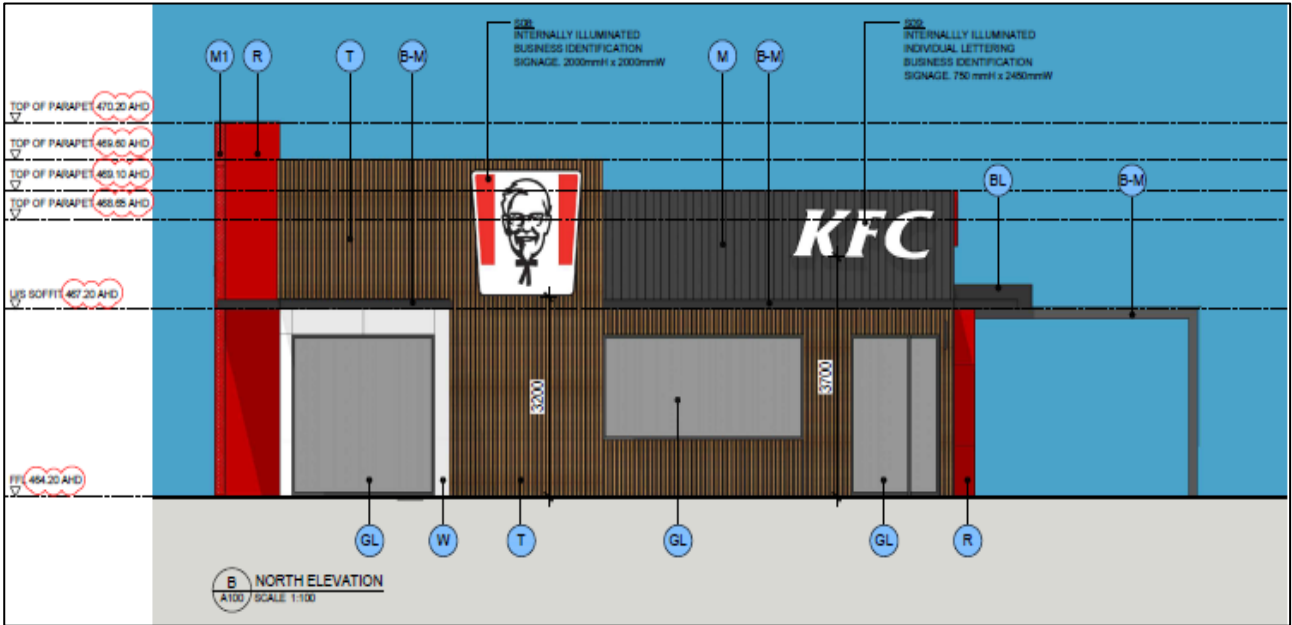


Figure 6: Proposed Northern Elevation (Horatio Street)

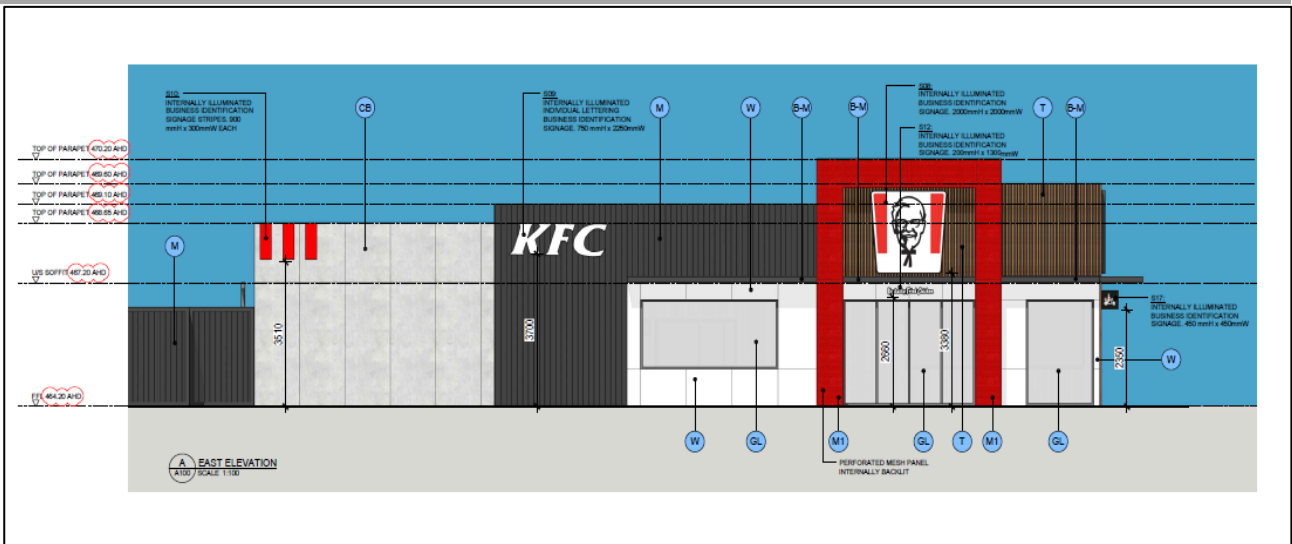


Figure 7: Proposed Eastern Elevation

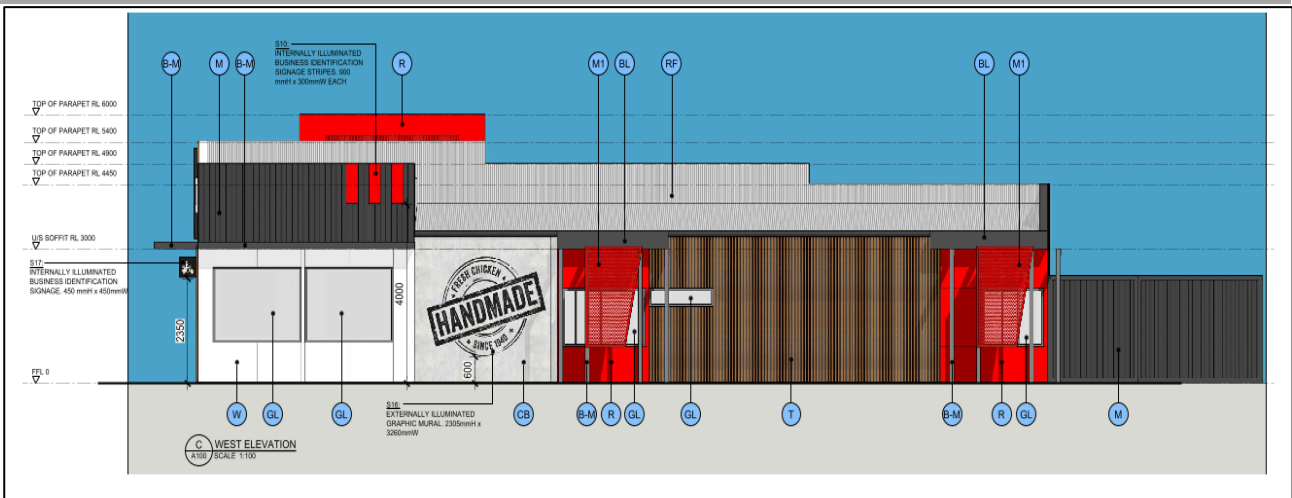


Figure 8: Proposed Western Elevation

Part 4.5 Commercial Development

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
Building setbacks	
Building setback from the street – no minimum	Yes – the proposed building is setback 9.7m from Horatio Street.
Side and rear setbacks must comply with BCA	Yes – western setback = approximately 14.8m, eastern setback = approximately 14.32m, rear setback = approximately 15m
Signage	
Signage complies with relevant provisions in section 4.4 DCP 2013	No. Refer to Part 4.4 assessment of report. Conditions recommended.
Design	
Buildings interact with the street	Yes. Various windows and materials incorporated into the northern elevation.
On active street frontages, ground level of building used for business or retail premises	Not applicable
Building facades are articulated by use of colour, arrangement of elements, or varying materials	Yes. Various colours and finishes included on the building façade including ‘clip-on timber look battens’. Corporate colours and the typical KFC design are also included. Whilst the site is located in the Mudgee Heritage Conservation area, the overall finishes proposed have been reviewed by Councils Heritage Advisor and owing to the overall immediately surrounding development that are not considered to be individually contributory to the Mudgee heritage conservation area, there is no objection to the general built form of the development as proposed.
Heritage inclusions	Yes. Heritage impact assessment provided and addressed within section 5.10 of this report against the provisions of the LEP 2012.
External plant to be screened from public	Most external plant are proposed to the rear service area. Condition recommended.
Development on a corner – includes architectural features to address both streets	Not applicable
Landscape buffers to other zones	Landscaping provided which is considered to be appropriate for the site and softens the overall commercial development. Condition imposed to manage the landscaping onsite in perpetuity.
Scale form and height	
Complies with LEP height controls – 8.5m maximum height	The site is not mapped with a maximum building height and therefore a merits-based assessment is required. The proposed building height of 6m is considered suitable owing to the increased front, side and rear setbacks, however the pylon sign is required to be reduced from 8.5m to 7m in

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
<p>Consistent with existing heritage character of the town centres of Gulgong, Mudgee and Rylstone</p>	<p>accordance with Part 4.4 of the DCP.</p> <p>Whilst the development is not considered to be consistent with the existing heritage character of the Mudgee Heritage Conservation area, the development has been reviewed by Council’s Heritage Advisor and as noted within the above assessment under Clause 5.10 of the LEP, there is considered to be limited heritage value of the immediate built precinct, and therefore the proposed development will have a minor impact in this location. There is no objection to the proposal on heritage grounds.</p>
<p>Mortimer and Church Street, Mudgee</p>	
<p>Maintain the streetscape established in Church Street between Market and Mortimer Streets: – Zero front and side setbacks – Double storey pattern</p>	<p>Not applicable</p>
<p>Provides variance particularly on upper floor levels, every 20-25m</p>	<p>Not applicable</p>
<p>Articulation and Façade Composition</p>	
<p>Breaks visual bulk with fenestration or change in materials etc.</p>	<p>Yes. Varying materials and colours provided.</p>
<p>No excessive blank walls in front façade</p>	<p>Yes. Visual bulk is reduced with the inclusion of various colours and materials.</p>
<p>Where blank walls are proposed (side or rear), minimise impacts with landscaping, patterning of façade, signage, public art</p>	<p>Yes. Minimal blank walls are proposed to side or rear boundaries and additional landscaping and large setbacks provided as part of the proposal minimise impacts in this regard.</p>
<p>Residential–Commercial interface</p>	
<p>Landscape buffer to residential boundaries</p>	<p>Yes. Landscaping of boundaries provided to all boundaries.</p>
<p>Ground and first floor do not overlook residential properties</p>	<p>Not applicable – development is single storey.</p>
<p>Maintain acoustic privacy through the use of acoustic fencing where vehicles movements adjoin property boundaries</p>	<p>The proposed development includes landscaping of the site along with boundary fencing however, there is no clarity shown on the plans in relation to the type of fencing proposed along the boundaries to the east, south and west.</p> <p>The Acoustic Assessment submitted with the application states that all noise modelling undertaken included a 2.0m high fence with the sound transmission loss for the barrier based on material with a minimum surface density of 15kg/m² (<i>for example a fence constructed of lapped and</i></p>

DEVELOPMENT CONTROL REQUIREMENT

COMPLIES?

	<p><u>capped timber (12.5mm paling thickness, 25% overlap each side) or masonry (single 110mm brick)</u>). This report was then recently amended to include a maximum 300mm gap at the rear fence / boundary to accommodate overland flooding and resulted in the internal drive-through bund wall being increased to 300mm.</p> <p>The acoustic report also noted that the boundary fencing will not provide relief to residential dwellings surrounding the site during waste collection due to the overall height of a truck required to access the site however, the report proceeds to note that the collection of wastes will only occur between <u>8am and 10am weekdays</u> and would take 2 – 3 minutes to complete. The report does not however include any noise modelling or details in relation to site deliveries of fresh or frozen goods.</p> <p>The initial traffic report prepared by Triaxial Consulting submitted with the application states that deliveries will be required by various suppliers utilising a MR (12.5m) truck and LR (4.2m) truck on most days (excluding Sundays). A condition is recommended to address this oversight in the acoustic report and ensure early morning and late night (prior to 7am) do not occur and impact on residential receivers.</p> <p>As a result of the noise assessment findings including adoption of the above fencing and bund wall, along with restriction to the hours of operation/deliveries being used as the primary noise control measures, the development will achieve compliance with the assessed noise criteria to ensure there are no impacts on adjoining residential receivers. A condition is imposed in this regard.</p>
<p>Reduce visual bulk by locating buildings and structures away from residential boundaries, or where buildings are located along residential boundaries ensure sufficient landscaping is provided</p>	<p>Yes. Sufficient separation is provided to the adjacent residents with landscaping treatments throughout.</p>
<p>Development does not reduce sunlight available to north facing windows of living areas, private open space or clothes drying areas of adjoining properties to less than 3 hours between 9am and 3pm at winter solstice</p>	<p>Yes. Owing to the significant setbacks to the side and rear boundaries, the development does not reduce sunlight to less than 3 hours between 9am and 3pm on adjoining residential properties.</p>
<p>Utilities and Services</p>	
<p>Building and structures located clear of infrastructure</p>	<p>Yes. Compliance is achieved.</p> <p>It should be noted however that the proposed dual driveways will impact on the avenue of Council street tree assets in this location and complete removal of the street trees was not supported by Councils Recreational Services Department.</p>

DEVELOPMENT CONTROL REQUIREMENT	COMPLIES?
	The applicant subsequently amended the proposed landscape plan to include replacement street tree plantings away from the driveways which is generally supported by planning staff to facilitate safe vehicle access and egress. It is recommended that the plants be of a mature size (200L bags) and tree barriers also be placed by the developer for protection. A condition is imposed accordingly.
Able to be serviced by water, sewer and waste disposal	Yes. Compliance is able to be achieved.
Trade waste application required?	Yes. Condition imposed.
Traffic and Access	
All vehicles must be able to enter and exit the site in a forward direction	Yes. Noting that dual driveways are proposed.
All vehicle movement paths are sealed	Yes. Shown on plan and conditioned.
Driveways comply with Australian Standard AS2890.1 Parking Facilities	Yes. Condition imposed.
All loading facilities located within the site	Yes. A loading and service area is also shown on the south eastern side of the building.
All loading facilities designed to comply with Australian Standards	Yes. A condition will also be required to ensure compliance is achieved.
Application addresses traffic flow and safety issues, e.g. pedestrian, car and truck movements	Yes. The application was supported by a revised Traffic Impact Assessment and this has been referred to Transport for NSW and Council's Development Engineers. Upon additional traffic surveys and updated report being provided by the applicant, no objection to the proposal has been provide by TfNSW and Council's Development Engineers.
Pedestrian Access	
Maintain existing covered pedestrian access within town centres	Not applicable
Convenient and safe access through parking areas	Yes. Internal footpath connections provided onsite.
Convenient and safe disabled access through parking areas, focus on improving links with existing retail	Yes. Links to other sites not altered by the proposal.
Parking	
Discussed elsewhere in report	Yes. Parking numbers achieve compliance.
Landscaping	
Landscaped areas in car parks should be provided incorporating	No. The landscape plan provided to support the application does not propose any canopy trees within the parking

DEVELOPMENT CONTROL REQUIREMENT

COMPLIES?

the use of canopy trees and buffer planting to residential boundaries

areas. Landscaping treatment is limited to groundcovers, hedges and border plantings throughout, including along the boundaries, with accent plantings also proposed adjacent to the building. The landscape plan was however amended during assessment to denote 3 replacement street trees to replace those street trees that are required to be removed to facilitate the dual driveways proposed. The proposed landscaping plan is generally supported.

Landscaping to comprise low maintenance, drought and frost resistant species

The landscape plan includes grevilleas, purple flax, murrayas, and liriopie along with birds of paradise accent plantings. Whilst the overall location of landscaping treatment is supported, conditions are recommended to ensure the species are modified to include hardy, low maintenance, drought and frost resistant species that will survive in this location.

Part 4.7 Tree Preservation Order

There are no trees listed within Part 4.7 located on the site that have been identified as a significant tree that requires preservation.

Part 5.1 Car Parking

In accordance with the DCP, the following parking calculations are provided for the development:

DCP Requirement	Comments	Compliance achieved
<p>Restaurants or cafes or Take away food and drink premises require: <i>1 space per 7m² gfa or 1 space per 3 seats whichever is the greater (Restaurant).</i></p> <p>Drive thru food service requires: <i>10 spaces, either in queue or as normal parking</i></p>	<p>Gross floor area of the restaurant = 92m² 92/7 = 13.1 spaces OR Total seat numbers = 40 seats 40/3 = 13.3 spaces PLUS 10 spaces for Drive – thru facilities Based on the higher value applied on a per seat basis for the restaurant, 13 spaces (rounded to the nearest whole number) achieves compliance with the DCP. Further, an additional 10 spaces have been accommodated onsite to achieve compliance with the DCP for drive through facilities.</p>	<p>Yes. Compliant onsite parking numbers are achieved. A total of 21 parking spaces (reduced by 2 x waiting bays as required by TfNSW requirements), plus at least 10 spaces within the single drive-through (stacked) has been provided. It is noted that any additional queuing in the drive through will have an impact on traffic flow, the service /loading area, parking numbers 1 to 7, along with vehicle movements within Horatio Street. A Plan of Management is recommended to manage traffic onsite by trained staff. A condition is recommended accordingly.</p>

Notwithstanding the above, the proposal results in a variation to the requirements of Part 5.1 relating to landscaping of the parking area to include shading at the rate of 1 shade tree per 6 car parks and also the requirement to retain existing trees on the site where possible. No trees are proposed to be retained on the site and no shade trees are proposed within the car parking areas of the site. This is considered generally acceptable owing to the parking layout and landscaping buffer of the entire boundary.

Part 5.2 Flooding

As noted within the assessment comments under Clause 5.21 of the LEP 2012, part of the site is identified as medium and high flood risk and impacted by overland flows associated with the 1 in 100 year event.

Council's DCP 2013 Section 5.2 Flooding however, notes the following with respect to the mapped flood risk precincts:

Flood Risk Precincts	<p>Each of the floodplains within the local government area which have been subject to flood investigations have been divided based on different levels of potential flood hazard. The relevant Flood Risk Precincts (FRP's) are outlined below.</p> <ul style="list-style-type: none">• High Flood Risk Land that is below the 100 year ARI flood that is subject to high hydraulic hazard (ie provisional high hazard in accordance with the Floodplain Management Manual) or areas that are isolated in a 100 year ARI flood due to evacuation difficulties.• Medium Flood Risk Land below the 100 year ARI flood level that is not subject to high hydraulic hazard and where there are no significant evacuation difficulties.• Low Flood Risk All other land within the floodplain (i.e. within the PMF extent) but not identified as either in a high flood risk or medium flood risk precinct.
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Figure 9: DCP 2013 Flood Risk Precincts Excerpt

Appendix A - Matrix 1 Urban Floodplains contained within Council's DCP states that Commercial Development is an **unsuitable land use within areas nominated as high flood risk** (see below).

MATRIX 1 URBAN FLOODPLAINS
 Urban Floodplains
 Planning & Development Controls

Planning Consideration	Flood Risk Precincts (FRP's)																										
	Low Flood Risk						Medium Flood Risk						High Flood Risk														
	Essential Community Facilities	Critical Facilities	Subdivision	Residential	Commercial & Industrial	Tourist Related Development	Recreation & Agriculture	Minor Development	Essential Community Facilities	Critical Facilities	Subdivision	Residential	Commercial & Industrial	Tourist Related Development	Recreation & Agriculture	Minor Development	Essential Community Facilities	Critical Facilities	Subdivision	Residential	Commercial & Industrial	Tourist Related Development	Recreation & Agriculture	Minor Development			
Floor Level	3		2	2	2							2	2	2	1	2,4										1	2,4
Building Components	2		1	1	1							1	1	1	1	1										1	1
Structural Soundness	2											2	2	2	2	2										1	1
Flood Affection	2	2			2	2					1	2	2	2	2	2										1	1
Evacuation	2										1	1	1	1	1	1										1	1
Management & Design	4,5										1		2,3,5	2,3,5	2,3,5	2,3,5										2,3,5	2,3,5

Not Relevant
 Unsuitable Land Use

Note: reference to freeboard refers to an increased height of 0.5 metres

Figure 10: Appendix A - DCP 2013 - Urban Floodplains

The DCP 2013 matrix also lists a number of requirements for commercial development in the medium risk precinct such as:

- Floor levels to be greater than or equal to the 100 year flood level plus 500mm of freeboard.
- All structures have flood compatible materials below the 100 year flood level.
- Applicant to demonstrate that any structure can withstand the forces of floodwater, debris and buoyancy up to an including the 100 year flood level plus freeboard.
- The impact of the development on flooding elsewhere to be considered.
- Reliable access for pedestrians and vehicles is required during a 100 year flood.
- Flood plan required where floor levels are below the design floor level.
- Applicant to demonstrate that area is available to store goods above the 100 year flood level plus freeboard.
- No external storage of materials below the design flood level which may cause pollution or be potentially hazardous during any flood.

Given the above-mentioned requirements of the high flood risk precinct, the development will constitute a variation to the DCP.

The applicant submitted a site specific flood study (and various revisions) based upon several requests for information by Council with the final report addressing prior Council requests provided on the 6 July 2023.

The revised flood study includes modelling of the site in both pre and post development states for the 1%, 5% and 20% AEP flood events. The study also includes a comparison of flood affection in both the pre and post development scenarios, modelling demonstrating the flood hazard categories on-site in both the pre and post development scenarios and modelling of flood velocities in both the pre and post development states.

The proposed development has been amended to ensure compliance with Council's DCP requirements with respect to finished floor levels, material selection and storage of hazardous materials. The development has also been amended to allow the passage of flood waters through the site and around the proposed building as a result of the flood study undertaken.

The existing open channel on-site is proposed to be replaced with twin 1.5m x 0.6m reinforced concrete box culvert units. Provision for overland flow through the site has been made through the grading and shaping of the car park and driveway areas, the use of taller (200mm) kerb edging to ensure flows are not dispersed onto adjoining sites and the use of a 300mm opening to the base of the fence at the rear (southern) boundary of the site.

Whilst it is noted that Council's DCP 2013 does not support the proposed commercial development in the high hazard flood risk area of the site, the applicant has completed a merits-based assessment of the proposal based upon the results of the flood study and recommends support of the application.

The applicants consultant within the Flood Modelling Report dated 6 July 2023, concludes the following:

After review of the model results and mapping output, we confirm that the extension of the existing culvert to the Southern boundary of the site will have minimal impact on the site flooding. Any potential effects can be offset by managing the site levels and inclusion of an underground OSD tank.

Although the site is listed as "high risk" and contains a concrete lined channel conveying the 1% flow through the site, the inclusion of a new underground box culvert and careful management of the site finished levels as shown on Triaxial engineering plans will ensure that the criteria listed in the Mid-Western Regional Council Urban Floodplain Planning and Development Control Matrix will be complied with.

The application is reported to Council for its determination, noting neither the original flood mapping or Council's DCP 2013 have been altered at this time - the development remains an unsuitable land use under the high flood risk precinct of the DCP 2013. The development however seeks to increase the finished floor level of the building and ensure compliance is achieved with the medium flood risk precinct requirements of the DCP.

Should Council be of a mind to accept the applicants' arguments outlined in the Flood Modelling Report dated 6 July 2023, recommended conditions have been included by the Development Engineering Department for Council's consideration which is supported by staff.

Part 5.3 Stormwater Management

Council's Development Engineer has provided comments and conditions concerning the disposal of stormwater.

Part 5.4 Environmental Controls

All relevant considerations have been discussed elsewhere in this report or may be dealt with through conditions of consent.

Contributions

MID-WESTERN REGIONAL CONTRIBUTIONS PLAN 2019

Pursuant to Council's Contributions Plan 2019, the development is proposing a commercial development that has a proposed cost greater than \$200,000. Therefore, a levy of 1% applies in accordance with the Plan.

The contribution payable has been calculated based on the submitted application costing being \$1,800,000.00 x 1% = \$18,000. A condition has been applied accordingly.

Section 64 - Water/Sewer Developer Services Charges

In accordance with the Developer Servicing Plans for Water and Sewer (August 2008), the proposed development will require the payment of DC headworks charges based on an ET of 0.8 for a commercial restaurant. A condition has been imposed accordingly for payment of the contributions.

4.15(1)(a) Provisions of any Planning Agreement or Draft Planning Agreement – (1)(a)(iia)

No Planning Agreements are applicable.

Regulations – 4.15(1)(a)(iv)

ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

Additional matters that consent authority must consider:

The Regulations requires Council to consider AS2601 when consent is sought for demolition of a building. The application includes demolition and compliance with AS2601 will be required and included as a condition of consent.

Likely impacts of the development – 4.15(1)(b)¹

¹ Including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

(A) CONTEXT AND SETTING

Based on a full merits-based assessment of the proposal as outlined in this report, the proposed food and drink premises is considered to generally be an appropriate development for the subject site, subject to the recommended conditions of consent.

The zoning of the site relates to the provision of a 'variety of tourist related development' and food and drink premises are permitted with consent in the SP3 zone.

The development provides significant setbacks (greater than the DCP 2013 requires) to Horatio Street and all adjoining boundaries in order to reduce its impact and dominance in the streetscape, whilst ensuring there is a suitable access arrangements and traffic flow through the site.

(B) ACCESS, TRANSPORT AND TRAFFIC

The application proposes dual driveways to service the development, seeks to upgrade Horatio Street to include a centralised right-hand turning lane for eastbound vehicles and also seeks to restrict all right hand turning of vehicles into Horatio Street from the site with the placement of a 'barrier' in the north-western driveway – see Figure 11 below.

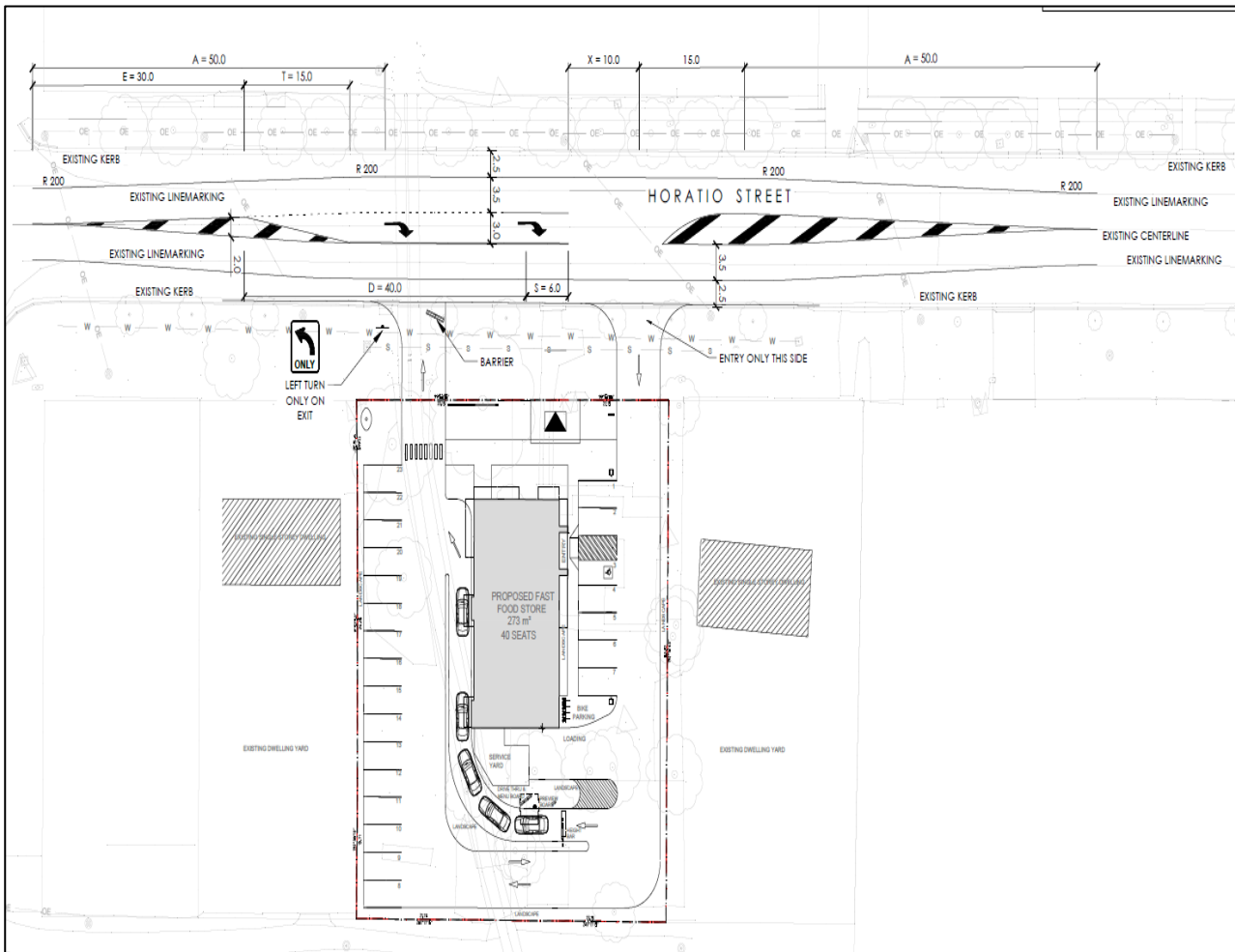


Figure 11: Proposed upgrades to Horatio Street

As the development seeks works within the classified road network, pursuant to Section 138(2) of the Roads Act 1993, concurrence from Transport for NSW (TfNSW) is required in respect to such works within any classified State road network, noting that Council is the consent authority and also the roads authority in this respect.

Final revised traffic assessment and modelling was provided to Council and TfNSW, prepared by McLaren Traffic Engineering. As noted within this report, TfNSW provided no objection and conditions of consent on the 21 March 2023.

Council's Development Engineering Department have also reviewed the revised information supplied, along with the response from TfNSW and advised the following:

Access to the proposed development site is via two new separate entry and exit driveway crossings off Horatio Street, with exit from the site being left out only. A channelised right turn lane (CHR) intersection treatment within Horatio Street is proposed.

As Horatio Street is a State Road, the application was referred to TfNSW for their assessment and concurrence. TfNSW provided their concurrence in a recent letter to Council dated 21st March, 2023.

The concurrence provided 10 recommended conditions; these matters are all able to be incorporated as conditions of consent. The 10 conditions are summarised below:

- 1. Provision of a channelised right turn lane (CHR) on Horatio Street.*
- 2. The developer to enter into a WAD with TfNSW.*
- 3. Completion of all road works prior to commencement of construction on site.*

4. *All works at full cost to the developer.*
5. *Access driveways and laybacks to be in accordance with MWRC standards.*
6. *Provision of a "No stopping" zone on the southern side of Horatio Street (approval required from MWRC LTC).*
7. *Provision of two waiting bays to Council's satisfaction.*
8. *Deliveries to occur outside of peak hours.*
9. *The developer is to obtain an ROL prior to commencement of works in Horatio Street.*
10. *Transportation of contaminated fill requirements.*

The letter also raised 3 additional comments for Council's consideration: impact of construction traffic, impact on existing drainage infrastructure and pedestrian connectivity. Matters 1 and 3 can be addressed via conditions of consent, while matter 2 is discussed in detail under the flooding / stormwater headings below.

These matters will be addressed as conditions of consent.

Subject to compliance with the recommended conditions of consent, there is not considered to be an adverse impact on the road network, with compliant carparking and access able to be provided for the development.

(C) PUBLIC DOMAIN

The development is not considered to impact the public domain in terms of recreation opportunities, the amount, location, design, use and management of public spaces, or remove pedestrian linkages between public spaces. It should be noted however that the proposed development has been conditioned to include a new pedestrian connection (concrete shared path) within Horatio Street towards the Mudgee CBD being some 98 metres in length. Further, as the development seeks to also provide bike storage racks within the development, encouraging cycling options to the site, a safe pedestrian connection to the site must be provided.

(D) UTILITIES

All relevant utilities are available or can be made readily available to the site as noted under clause 6.9 of the LEP 2012 noting that suitable road access remains a significant issue for the development.

(E) HERITAGE

As noted within the above assessment under Clause 5.10 of the LEP 2012, there are no heritage-based grounds of objection to the proposed development.

(F) OTHER LAND RESOURCES

No impacts are expected on the conservation and the use of valuable land, such as productive agricultural land, mineral or extractive resources, or water supply catchments.

(G) WATER

No significant impact expected to town water supply however, it is noted that stormwater and flooding impacts have been addressed by the Development Engineering Department referral and assessment included earlier within this report.

(H) SOILS

No significant impact expected. The land is not known to be affected by subsidence, slip or mass movement, subject to contamination, and will not result in significant soil erosion or degradation, subject to compliance with the recommended conditions of consent.

(I) AIR AND MICROCLIMATE

The development is not expected to impact air quality or microclimatic conditions. The development application has been supported by an odour report in response to the air quality concerns raised by the community during public notification. The report noted a number of recommendations which have been endorsed by Council's Environmental Health Officer which included the following:

- The main kitchen exhaust hood (H-01) shall be designed to include an exhaust air emission control system with provision for ozone dosing. The dosing shall be dosed at a location that maximises contact time between the ozone and exhaust airstream (minimum 2 seconds). Details of the design shall be submitted to the Principal Certifier prior to the issue of the Construction Certificate.
- A Certificate of Compliance is to be provided to the Principal Certifier for the mechanical exhaust system to certify that the installation complies with AS1668.1 & AS1668.2 as per the Building Code of Australia Volume 1 Part F4.12.
- If Council receives odour complaints a field-based investigation study shall be completed by a suitably qualified odour control engineer consisting of the components specified on page 22 of the Odour Assessment Report by The Odour Unit dated 19 November 2021.

As such, conditions of consent to manage air quality concerns have been recommended accordingly.

(J) FLORA AND FAUNA

The vegetation proposed to be removed has been discussed throughout this report.

(K) WASTE

During demolition and construction, wastes will be required to be managed onsite in accordance with standard conditions of consent. Further, the application proposes a commercial waste collection arrangement to service the site during operations and a Waste Management Plan forms part of the recommended approved documentation.

(L) ENERGY

The application will be subject to Section J requirements in accordance with the BCA.

(M) NOISE AND VIBRATION

An assessment has been conducted to determine the noise impact as a result of the development. The assessment considered the potential for adverse noise impacts as a result of;

- Operation of the drive through (movement of vehicles and the drive through service),
- Car parking,
- Mechanical plant,
- Kitchen vent fans,
- Waste removal, and
- Road traffic associated with the restaurant.

The assessment was based on the following recommendations being in place at the site;

- Boundary fences acting as acoustic barriers to 2.0m high along the eastern, western and southern boundaries,
- The plant area being fitted with acoustic louvres (to achieve the minimum insertion loss as detailed in Table 14 of the report),
- Parapet walls acting as acoustic barriers on the facade of the building (to the heights detailed in Section 5.6 of the report).

Following submission of an amended flood report for the site, the southern fencing is now proposed with a 300mm gap in the bottom to enable the free flow of flood waters. As a result, the internal drive-through will require a 300mm raised bund to be placed next to the queuing area to achieve compliance with the adopted noise criteria.

The report concludes however that with the above recommendations in place, the theoretical noise from each assessed noise source will not exceed the adopted criteria at any receiver.

Notwithstanding this conclusion, it has been predicted that there may be an exceedance of the project noise trigger levels for the site due to the cumulative noise from all noise sources operating at worst case levels. The predicted exceedance would be less than 2dB(A) Leq (15 min) at receivers R1 and R2 (adjoining the site). Such an exceedance is considered negligible as per the discussion in the Noise Policy for Industry Guidelines.

Further, it is noted from the report that there will be a minor noise exceedance during waste collection activities, during a suggested 2-3 minute window between 8am and 10am. As this is during the day time and for a small window, the impact is considered to be negligible.

Whilst the abovementioned noise mitigation measures are supported by staff, the noise report does not include modelling in relation to other or multiple truck deliveries of fresh or frozen goods as outlined within the traffic report provided to support the development. Notwithstanding, it is considered that conditions of consent in relation to times for deliveries to the subject site can be managed via conditions of consent to mitigate potential cumulative traffic related noise impacts to adjoining properties.

(N) NATURAL HAZARDS

The site is identified as flood prone. This has been discussed elsewhere in the report with conditions recommended.

(O) TECHNOLOGICAL HAZARDS

There are no known risks to the biophysical environment, resulting from technological or industrial hazards, or building fire risk.

(P) SAFETY, SECURITY AND CRIME PREVENTION

The application was supported by a Social Impact Assessment prepared by SLR which aimed to address a number of concerns raised by the community during the public notification period along with an explanation of the proposed adoption of crime prevention through environment design principles.

The assessment considered the social impact of the proposed redevelopment of the site and identified it as acceptable subject to implementation of the following recommendations:

- *The proposed pylon sign at the front of the site be reduced in height (see Section 6.5.2);*
- *A Plan of Management (PoM) be prepared and adopted by way of condition(s) of consent, outlining the management procedures for the premises to ensure impacts of concern are appropriately managed (see **Section 7.2**);*
- *Council and Broadview (the developer) proceed with proactive communication within the local community on the proposed development.*

The assessment notes the following in relation to Crime Prevention measures:

The proposed development minimises criminal opportunities via appropriate consideration of the principles of CPTED, namely surveillance, natural access control, territorial reinforcement, and space management. These principles translate into design

components such as clear sightlines (no opportunities for offenders to hide); clear delineation between public space and back of house areas; use of easy to maintain building elements (communicating an alert and active presence), effective lighting of external areas and designated walking paths across the site, appropriate signage, landscaping treatments and use of security devices such as CCTV cameras. Implementation of the above-mentioned measures into the design of the proposed development aims to create an environment that will dissuade crime and anti-social behaviour.

KFC maintains the most current standards of safety and training for staff in relation to safety procedures and protocols. Training materials that form part of all employee on-boarding processes will also be outlined in the Plan of Management developed for the proposal, which every staff member will be required to be familiar with upon employment. Crime Prevention training material includes behavioural systems for employees such as the use of keys and locks on the premises, daily safe checks for financial fraud, and how to lodge security incidents for suspicious activity. Violent Crime and Robbery training material contains procedures for employees handling violent crime situations that may occur on the premises including within the carpark, and potential robbery scenarios. Specific Alarm System training material is also provided with details on how to arm and disarm the alarm, and respond to alarm emergencies.

The above-mentioned training materials can be made available for review by Council if requested.

In summary, the incorporation of CPTED principles into design components, and the existing standard procedures employed by KFC are anticipated to be sufficient for the operation of the development. The use of the site as a food and drinks premises is unlikely to have any appreciable impact on safety for staff and customers or surrounding residents given the implementation of the Plan of Management.

It is important to note that the plans do not indicate the locations over the site in which CCTV or security lighting will be introduced or if the locations of such security devices will have an adverse impact on those adjoining residential dwellings. It is generally considered however that the significant side and rear setbacks of the development along with the requirement to install 2m high acoustic fencing will not lend itself to any significant light spill or privacy invasion from the building, subject to the appropriate placement of the security measures on the proposed building. Conditions are therefore recommended to address this concern accordingly.

(Q) SOCIAL IMPACT IN THE LOCALITY

The proposal was supported by a Social Impact Assessment which included the following potential social impacts:

- land use change and implications to the community's sense of place and property right;
- traffic and parking;
- odour;
- noise;
- visual amenity and lighting;
- waste; and
- anti-social behaviour.

The assessment states that a Plan of Management should be prepared to govern the operation of the premises, along with conditions of consent to address the following:

- Waste management as per the Waste Management Plan (Broadview, 2021);

- Regular maintenance checks of the noise mitigation measures in place as per the Noise Impact Assessment (Spectrum Acoustics, 2021);
- Regular checks of sign output levels as per the Illuminated Signage General Assessment (C-Level Design & Engineering, 2021);
- Daily litter checks of the site, street frontage, and line of sight from the premises as per staff training materials;
- Regular landscaping maintenance and programs to replace dying or deceased plants; and
- Details of, and continued implementation of, standard KFC training for staff in relation to safety procedures and protocols, site maintenance including waste management, and complaints handling.

Such a plan of management is supported by staff and a condition of consent is recommended.

(R) ECONOMIC IMPACT IN THE LOCALITY

The propose development will attract economic benefit to local contractors and businesses during demolition, construction and operation along with the support of local staff during operations.

(S) SITE DESIGN AND INTERNAL DESIGN

As discussed throughout this report, initial concerns were raised primarily due to site access and queuing of vehicles into Horatio Street, along with stormwater and flooding of the site.

As these matters have since been resolved in consultation with TfNSW and the Development Engineering Department, there are not considered to be any additional significant concerns in relation to the site or internal design that cannot be managed via conditions of consent.

(T) CONSTRUCTION

To comply with the BCA where relevant. Limitation to the hours of construction / demolition is also conditioned accordingly.

(U) CUMULATIVE IMPACTS

The proposed development is not considered to have any significant cumulative impacts on the site, the road network or surrounding land subject to compliance with the recommended conditions of consent.

Suitability of Site for Development – 4.15(1)(c)

(A) DOES THE PROPOSAL FIT IN THE LOCALITY?

Whilst there are no hazardous land uses or activities nearby, it is considered that the development has been designed to ensure there is minimal impact on the locality and surrounding land. Further, key areas of concern from Council staff and the community are able to be appropriately conditioned to ensure compliance during operations is managed onsite.

(B) ARE THE SITE ATTRIBUTES CONDUCIVE TO DEVELOPMENT?

The site is not subjected to any significant natural hazards, with the exception of flooding as noted within this report. The proposal will not impact any critical habitat, threatened species, populations, ecological communities or endangered habitats on the site.

Submissions made in accordance with Act or Regulations – 4.15(1)(d)

(A) PUBLIC SUBMISSIONS

The application was advertised and neighbour notified, in accordance with Mid-Western Regional Community Participation Plan 2019, for a period of 14 days, ending 1 October 2021. During the notification and advertising period, 44 unique submissions and 28 template submissions were received, a total of 72 submissions by way of objection have been received.

The applicant lodged amended supporting reports during the assessment process to respond to Council and TfNSW further information requests, and in relation to concerns of the community. Such additional information was not considered to alter the development proposal or warrant re-notification of the proposal to the community.

The submissions received by Council raised the following key concerns with comments provided in the table below:

Key Concern Raised:	Comment:
Land use change	<p>As noted within this report, the SP3 Tourist Zone permits a 'food and drink premises' with the consent of Council.</p> <p>The land has been zoned SP3 Tourist since the commencement of the 2012 LEP and there has been no zoning change since gazettal of the LEP in this location. The 'Tourist' zoning is provided as a commercial opportunity zone being on the main thoroughfare of Mudgee where there is significant exposure to passing trade.</p> <p>It is accepted however that the current land use will be altered by the proposal with the demolition of the existing dwelling and outbuildings however, the change in built form, subject to compliance with the conditions of consent, is considered acceptable and complies with the objective of the SP3 Tourist Zone.</p>
Signage	<p>The signage is generally supported, <u>excluding</u> the proposed signage within the front setback in its current form.</p> <p>As noted in this report, the pylon signage is recommended to be reduced from 8.5m to 7m and the 'banner signs' are to be removed to reduce the visual clutter on the classified road network, in the Mudgee Heritage Conservation Area, and also improve road safety in this location.</p> <p>Further, dimmable drivers are recommended to be implemented on the illuminated signage to reduce potential impacts in accordance with the illumination assessment provided.</p>
Traffic and parking impacts to Horatio Street and other collector roads	<p>As noted within this report, the road upgrades to facilitate the proposed development within Horatio Street is generally supported by Transport for NSW and Development Engineering. The final design will be required to be lodged under a Section 138 <i>Roads Act</i> application with final concurrence and 'WAD' approval also required by TfNSW.</p> <p>The proposed onsite parking to support the development exceeds the minimum requirements under Council's DCP 2013 however, to ensure that any potential queuing into Horatio Street as a result of the drive through facility does not occur, a Plan of Management for the site is required. A condition has been recommended accordingly.</p>

<p>Access impacts and on-street parking in front of residential properties</p>	<p>The proposed road upgrades within this location will result in minor impacts to on-street parking in front of the site and adjacent to each driveway point (total of approximately 3 spaces) in order to create the channelised right hand turning lane on the east bound approach. Noting that the works within Horatio Street are subject to a separate approval process under the <i>Roads Act</i> and final concurrence from TfNSW.</p> <p>TfNSW require a 'no stopping' zone to be established on the eastern side of the proposed egress driveway (middle of the site or between the 2 driveways) to ensure there is compliant sight distance achieved when exiting the subject site. This will not however impact on any other properties.</p>
<p>Impacts on cyclists and pedestrians</p>	<p>The proposed development will be required to construct a 2.5m wide shared path from the eastern boundary of the site to the kerb return in Lawson Street (a total distance of approximately 98m) in order to improve pedestrian and cycling connections to Mudgee CBD. A condition is imposed accordingly.</p>
<p>Odours from cooking and fats</p>	<p>The development has been supported by an Odour Assessment which provides recommendations to eliminate odours from cooking and fats. The report has also been reviewed by Council's Environmental Health Officer with the recommendations to manage impacts supported by staff.</p> <p>Conditions have been recommended accordingly.</p>
<p>Noise and late-night trading</p>	<p>An independent Noise Impact Assessment has been provided which has been assessed by Councils Environmental Health Officer as noted within this report. The report provides recommendations to manage impacts associated with the operations over the site and demonstrates compliance is able to be achieved with the noise criteria during evening trade which is proposed to be limited to 10pm, daily.</p> <p>Deliveries and waste collections will be restricted to ensure there is no sleep disturbance in the night time period and conditions have been recommended.</p>
<p>Visual amenity and modification to the streetscape</p>	<p>As a result of the significant street setbacks (exceeding DCP controls) the development is unlikely to have a significant adverse impact on the visual amenity or streetscape in this location. The development is proposing an 8.5m high pylon sign and banner signage within the front setback which is not supported. A reduced overall height of the pylon sign to 7m is considered to be more appropriate and remains consistent with other approved commercial signage in the surrounding area.</p>
<p>Lighting pollution from signage and security lights</p>	<p>As noted within this report, owing to the large setbacks of the building and the supporting illumination assessment, conditions have been recommended to manage potential light spill from the development.</p>
<p>Devaluing properties</p>	<p>The devaluation of properties is not a relevant planning consideration as found within many Land and Environment Court decisions.</p>
<p>Waste management / littering / pest and vermin</p>	<p>A waste management plan has been provided with the application and is considered to be appropriate for all phases of the development however, the onsite management of litter and vermin is recommended to be included within the Plan of Management required to be prepared for the site - A condition has been imposed.</p>
<p>Anti-social behaviour and crime</p>	<p>A social impact assessment has been provided to support the development. Within this report, crime and antisocial behaviour has</p>

	<p>been addressed. The development has been designed with the principles of “Crime prevention through environmental design”, including:</p> <ul style="list-style-type: none"> • Surveillance • Natural access control • Territorial reinforcement • Space management <p>The development has open sight lines through the design of the building, boundary landscaping treatment, drive through and parking areas. The report also confirms that CCTV will be installed to dissuade crime and anti-social behaviour. Staff training is also mandatory as part of KFC operations.</p> <p>Conditions are recommended to ensure crime management is included within the Plan of Management for the site in order to reduce impacts on staff, customers and surrounding properties.</p>
Stormwater drainage	<p>The development has provided a stormwater drainage concept plan that will be further refined prior to issue of a construction certificate. The plan is generally supported by Councils Engineering Department, subject to conditions recommended and is to ensure that the development does not impact on surrounding properties as result of the proposal proceeding.</p>

The applicant has also responded to the submission concerns, along with undertaking separate community consultation, within the Social Impact Assessment report prepared by SLR Consulting Australia which has been included as **Attachment 2** to this report.

As noted above and as a result of a full merits-based assessment of the proposal, conditions are considered to be able to be imposed for the development in order to address the relevant concerns raised by the community. A redacted copy of all public submissions received by Council during the notification period is included as **Attachment 3** to this report.

(B) SUBMISSIONS FROM PUBLIC AUTHORITIES

The application was referred to:

- Essential Energy with conditions and comments provided; and
- TfNSW with conditions also provided.

The above external referral responses have been included within this report and included as recommended conditions of consent.

The Public Interest – 4.15(1)(e)

(A) FEDERAL, STATE AND LOCAL GOVERNMENT INTERESTS AND COMMUNITY INTERESTS

The proposed development has resulted in significant community interest however, the majority of the key areas for concern have been addressed by the applicant and may be restricted via conditions of consent to mitigate impacts during operations.

CONSULTATIONS

(A) HEALTH AND BUILDING

Council's Health & Building Surveyor has not raised any concerns with the proposal, subject to standard conditions.

(B) TECHNICAL SERVICES

Council's Development Engineer has provided a final referral response with the recommendation of a number of conditions of consent to address a number of concerns.

(C) HERITAGE ADVISOR

Council's Heritage Advisor has not raised any objections to the proposal as noted within the Clause 5.10 LEP assessment of the application.

(D) ENVIRONMENTAL HEALTH OFFICER

Council's Environmental Health Officer has reviewed the acoustic report and odour report and has recommended conditions of consent to address these concerns.

Community Plan implications

Theme	Protecting Our Natural Environment
Goal	Protect and enhance our natural environment
Strategy	Ensure land use planning and management enhances and protects biodiversity and natural heritage

Strategic implications

Council Strategies

Comprehensive Land Use Strategy
Mudgee Town Structure Plan
Mid-Western Local Strategic Planning Statement

Council Policies

Mid-Western Regional Development Control Plan 2013
Mid-Western Regional Contributions Plan 2019
Mid-Western Regional Community Participation Plan 2019
Mid-Western Regional Developer Servicing Plan 2008

Legislation

Environmental Planning & Assessment Act 1979
Environmental Planning & Assessment Regulation 2000
Mid-Western Regional Local Environmental Plan 2012
Roads Act 1993

Financial implications

Should the applicant seek to appeal the decision of Council to the Land and Environment Court, the costs associated with an appeal will be required to be funded by Council.

Associated Risks

Should Council refuse the Development Application, the applicant may seek a further review of this decision or appeal through the Land and Environment Court.

KAYLA ROBSON
PLANNING COORDINATOR

ALINA AZAR
DIRECTOR DEVELOPMENT

24 July 2023

- Attachments:*
1. Development Plans. (separately attached)
 2. SEE & Supporting Reports. (separately attached)
 3. Public Submissions (Redacted). (separately attached)
 4. Heritage Assessment Report. (separately attached)

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER