

COBAR SHIRE COUNCIL



EXTRAORDINARY MEETING AGENDA

**THURSDAY 10 AUGUST 2017
STARTING AT 4:00PM
IN THE COUNCIL CHAMBERS**

~ ORDER OF BUSINESS ~

Business for the meeting will be as follows:

1. Apologies
 2. Declaration of Interests
 3. General Manager's Report – Part A (Action)
 4. Matters of Urgency
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PART A – ACTION

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Clause 1A – Copper City Hotel and Motel Development Application 4

CLAUSE 1A – COPPER CITY HOTEL AND MOTEL DEVELOPMENT APPLICATION

**FILE: 2017/LD-016 AOP REFERENCE: 1.6.3.1 ATTACHMENT: YES
(PAGE 28-202)**

AUTHOR: *Manager Planning and Environmental Services, Stephen Poulter*

Purpose

To determine Development Application No. 2017/LD-016 pursuant to the legislative provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.

Due to an objection to this development proposal, this application is referred to Council for determination.

Application Details

Application number:	2017/LD-016
Applicant:	Scott Smith
Land:	Lots 1-9, Section 18 in Deposited Plan 2780 and Lot 1 of Deposited Plan 725285, No. 40 Lewis Street, Cobar
Owner:	Curtin Raiser Pty Ltd
Proposed Development:	Alterations and additions to existing motel accommodation and alterations and additions to existing restaurant, including change of use to pub.
Zoning:	B2 - Local Centre
Integrated Development:	Not applicable
Designated Development:	Not applicable
Other approvals under s78A:	Not applicable

Attachments

1. Aerial Photo of site;
2. Site plan of proposed work;
3. Floor plan of proposed work;
4. Elevation plan of proposed work;
5. Statement of Environmental Effects;
6. Letter from Roads and Maritime Services dated 26 April 2017;
7. Letter from Roads and Maritime Services dated 26 June 2017;
8. Emailed objection dated 3 May 2017;
9. Memorandum dated 6 July 2017 - Equivalent tenement calculation under Development Servicing Plans for Water Supply and Sewerage 2013;

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10. Memorandum from Director of Engineering Services dated 1 August 2017;
 11. Memorandum dated 3 August 2017 - Amended equivalent tenement calculation under Development Servicing Plans for Water Supply and Sewerage 2013.

Background

Council is in receipt of a Development Application seeking Councils consideration of a commercial development. This development comprises of the following:

- Alterations and additions to the existing motel accommodation area; and
- Alterations and additions to the existing restaurant area including a change of use to a Pub to be known as the Copper City Hotel; and
- Construction of new functions rooms, new sanitary facilities, new alfresco dining area, smoking and gaming rooms; and
- Live entertainment.

The application was lodged with Cobar Shire Council on 10 April 2017.

Following lodgment of the application, the proposal was notified to a number of nearby property owners and businesses. The application was also placed on public exhibition. The notification and exhibition of the application was from the 12th of April 2017 to the 3rd of May 2017. The application was also referred to NSW Police (licensing unit), NSW Roads and Maritime Services (RMS) and Councils Engineering Department.

Following notification, exhibition and referral of the application, one objection was received from the proprietors of the Empire Hotel and additional information was sought from RMS and Councils Engineering Department. No comments were received from NSW Police in response to the application.

In response to the concerns raised by RMS and Councils Engineering Department, additional information was sought from the applicant regarding traffic, car-parking, deliveries and proposed signage.

Additional/ amended information was supplied to Council and referred to RMS and Councils Engineering Department. RMS raised no further objections to the proposal. Councils Engineering Department reiterated their concerns about the lack of on-site car parking.

Following lodgment of the application site inspections were undertaken by Council Officers. The site inspection revealed that upgrades to the commercial kitchen would be necessary and these upgrades will be listed as conditions of consent. This is in addition to the prescribed considerations under Clause 94 of the Environmental Planning and Assessment Regulation 2000 regarding the need to upgrade the building to comply with the Building Code of Australia.

The application was amended on 2 August 2017 to include the provision of two staff accommodation rooms, a kitchen and a laundry. This work was purported by the applicant as commencing on the basis of being exempt development until identified by Council Staff as requiring consent.

The calculation of waste supply and sewerage contributions and car parking have been adjusted relative to this amendment.

Site Description and Locality

The subject site is located on the Eastern side of Lewis Street and Southern side of Conduit Street and adjoins a rest-stop to the South that fronts Nyngan Road.

The site is predominantly occupied by a single story motel with a now redundant restaurant on the South Eastern corner of the site.

This proposal seeks to undertake alterations and additions to the building containing motel rooms, the restaurant on the South Eastern corner of the site and renovation of some motel rooms on the North-Eastern corner of the site.

Permissibility

The proposal is permissible with consent under the Cobar Local Environmental Plan 2012. This property is zoned B2 - Local Centre.

Key Issues

Concern	Raised by	Discussion	Recommendation
Lack of on-site car-parking spaces	Council and RMS	RMS detailed in their first response (attached) that additional information was required pertaining to a number of matters, including parking. Following consideration of a traffic consultant's report, RMS raised no further objection (attached). Councils Director of Engineering Services Department has raised concerns about a 31.6 car space deficiency. The applicant's traffic consultant has advised of the deficiency; however justified this shortfall on the basis that the function rooms would not be used on a Friday night, therefore negating the additional car-spaces. This justification is flawed as it contradicts statements in other parts of the application where the function rooms would be used for the provision of entertainment and other	Impose a condition of consent requiring amended plans detailing 34 additional car-spaces on the site

		activities on Friday nights. An additional 2 car spaces is also required for the additional motel rooms that were subject of the late changes to the application.	
Noise during operation	Council	Applicant submitted acoustic report and amended plans demonstrating how potential noise emissions will be managed with design and operation management.	Impose conditions of consent to comply with the statement of environmental effects that contains the acoustic assessment report and a reviewable condition that has the ability of limiting the approved operating hours of the Hotel.
Neighbourhood Disturbance and Security	Council	A plan of management was submitted with the application that demonstrated how patrons and neighbourhood amenity will be managed during operation. Adoption of this plan of management would be conditioned in the development consent.	Impose a condition of consent to comply with the statement of environmental effects that contains the plan of management and a reviewable condition that can limit the operation hours of the Hotel.
Food Safety	Council	During a site inspection of the premises, the commercial kitchen was inspected by Council. A number of food safety related upgrades are necessary and would need to be undertaken before commencement of operations.	Impose a condition of consent requiring upgrades to the commercial kitchen to comply with the Food Act and Food Standards Code.
Traffic Impacts	Council and RMS	Following submission of a traffic management plan (as attached), RMS raised no further objections. However a shortfall of on-site parking spaces is still a concern.	Impose a condition requiring the provision of 34 additional on-site car parking spaces.
Business Competition Impacts	Proprietors of Empire Hotel (comments	This objection relates to potential impacts on an existing business in Cobar due to competition. As per the	No further action required.

	attached in email dated 3 May 2017)	High Court of Australia decision ' <i>Kentucky Fried Chicken Pty Ltd v Gantidis (1979)</i> ' and other relevant case law, business competition has been ruled out as a planning consideration.	
Waste Management	Council	Insufficient details have been provided in relation to the management of waste by this development.	Impose a condition of consent requiring an amended waste management plan be submitted to Council prior to the release of a construction certificate that is consistent with NSW EPA's Better practice Guidelines for Waste Management and Recycling in commercial and industrial facilities.
Flows and Pressures of existing street hydrant system	Council	The buildings on this property, including the building subject of this development proposal, are currently serviced by a fire hydrant located in Lewis Street. This hydrant coverage is non-compliant with the Building Code of Australia and AS 2419.1-2005. As such, a new fire hydrant system would be needed to be installed on the site. To achieve flows and pressures required for fire hydrant systems can rely on existing flows and pressures supplied directly from the mains (if its sufficient), or alternatively the new system would need to be fed from on-site water storage tanks and a pumpset. With regard to these additional measures there is space for these measures on site.	Condition to be imposed on the development consent seeking the installation of a fire hydrant system, and where needed on-site water storage tanks and pumpsets.

Developer Contributions and Levies

Calculations have been made with respect to this development and the need to make payment of Section 94A Developer Contributions and Section 64 Water and Sewerage Levies under Cobar Local Infrastructure Contributions Plan 2012 and Development Servicing Plans for Water Supply and Sewerage 2013 respectively.

With respect to s.94A Developer Contributions, the value of contributions is based on the estimated cost of the development (which is \$990,225). Cobar Shire Council's Infrastructure Contributions Plan 2012 requires payment of 1% of the estimated cost of the development as developer contributions where the estimated cost of the development exceeds the value of \$200,000. This equates to \$9,902.25.

With regards to s.64 water and sewerage levies, this value is derived by the respective uses of the proposed development and their equivalent loading on Councils water and sewerage infrastructure in comparison to a standard dwelling. In this particular case, the combined total water supply and sewerage charges payable are \$27,542.27. The memorandum that details the methodology of calculation is attached to this report.

The payment of the developer contribution and services levy will need to be made before release of a construction certificate as per condition of consent.

LEGISLATIVE CONSIDERATIONS

The application has been assessed in accordance with the provisions of the Environmental Planning and Assessment Act 1979. The following matters are considered relevant to this development application.

Threatened Species - s5A:

The proposed development has been considered in terms of s.5a and in particular whether the development will have a significant effect on threatened species or their habitats. No significant threats as relevant to s5A have been identified.

Evaluation of the Proposal - s.79C:

Planning Controls:

- *Cobar Local Environmental Plan 2012:*

The proposed development, for the purpose of identifying development categories under the Cobar LEP 2012, are considered to be defined as a pub and tourist and visitor accommodation.

These defined uses are permissible with consent in the B2 - Local Centre Zone. The objectives of this zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area;

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- To encourage employment opportunities in accessible locations;
 - To maximise public transport patronage and encourage walking and cycling.

On balance, having considered all relevant factors, it is considered reasonable to accept the position that the proposed development is consistent with the zone objectives.

Clause 6.1 - Earthworks:

The proposal will include very minor earthworks along the southern side of the property. These earthworks are primarily needed to provide a consistently flat foundation base for the new function room area and are unlikely to influence adjoining buildings or the boundary.

Clause 6.3 - Stormwater Management:

The proponent has advised Council in the statement of environmental effects that the stormwater will be disposed of to the street. This is considered acceptable given the size of the new roof area. Councils Engineering Department have confirmed that the existing stormwater system will be able to manage the additional stormwater captured by this proposal.

Clause 6.10 - Essential Services:

The essential services detailed in this clause are already existent to service this proposed development.

The proposal has been assessed as satisfying relevant planning controls and objectives in the Cobar LEP 2012.

- *SEPP 55 (Remediation of Land):*

Clause 7 of this policy details matters to be considered in determining a development application.

The proposed development does not involve a change of use of the land, therefore sub-clauses (2), (3) and (4) are not specifically relevant to this application.

However, consideration of the matters in sub-clause (1) as listed below is precondition to granting consent.

A consent authority must not consent to the carrying out of any development on land unless:

- a) It has considered whether the land is contaminated;
- b) If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out; and
- c) If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The above matters have been considered in the assessment by reference to a contaminated land preliminary land investigation relating to Lot 3 in DP 917693 which is in close proximity to the site and is considered representative of mining activities in the area.

The investigation of Lot 3 identified that heavy metals present in soils analyzed were in concentrations indicative of typical background concentrations, and below assessment criteria for residential land use. Testing for other contaminants were similar, being below the assessment criteria.

However, one 'hotspot' was identified on Lot 3 with low to medium risk of exposure as vacant/unused land. With appropriate remediation the site can be made suitable for future development.

Given that the site of the proposed works was historically used for a similar purpose as Lot 3, it is recommended that a preliminary site investigation of the land subject of this proposed development be required as a condition of consent prior to any work commencing.

There is an abandoned mine site on the subject property which indicates a history of mining on the land.

- *SEPP 64 (Advertising and Signage):*

The application as submitted does not include any advertising signs as relevant to this policy.

- *SEPP (Infrastructure) 2007:*

Under Clause 104 of this SEPP, developments that are defined as 'traffic generating developments' must be referred to RMS for consideration. In this particular case, the development did fall within this definition and was subsequently referred to RMS as earlier discussed in this report.

- *Proposed Instruments.*

There are no proposed or draft planning instruments applying to the land.

- *Development Control Plans:*

There are no development control plans applying to this land.

- *Planning Agreements:*

There are no planning agreements applying to this land.

- *Prescribed Matters- Environmental Planning and Assessment Regulation:*

Clauses 92, 93, 94, 94A of the Environmental Planning and Assessment Regulation 2000 are prescribed matters for consideration. For this specific development, the following comments are made:

Clause 92 - This development does include some demolition works. As such, a condition is imposed requiring compliance with AS 2601.

Clause 93 - This clause is not relevant to this proposal as the applicant is seeking to undertake alterations and additions of a building.

Clause 94 - This clause requires consent authority to determine whether an existing building subject of a development proposal, needs to be upgraded to comply with the Building Code of Australia.

This Clause requires the consent authority to consider whether an upgrade is necessary and to what extent.

The Australian Building Codes Board has published an advisory handbook on upgrading existing buildings. The contents of this handbook were used as part of the Clause 94 upgrading consideration.

Site inspections of the existing buildings on the site were undertaken to ascertain the existing level of compliance with the Building Code of Australia and to identify necessary matters for upgrade.

Examples of some of the deficiencies with the existing building include:

- Fire hydrant coverage does not comply;
- There are no accessible units provided in the motel accommodation;
- There are no accessible car spaces;
- Fire separation between sole occupancy units (accommodation) fails to comply;
- Swimming pool barrier does not comply.

Clause 94A - This clause is not relevant to this proposal as it does not involve the erection of a temporary structure.

Clause 98C - The intended use of the premises is not considered to be consistent with the definition of an 'entertainment venue' as detailed in Clause 3 of the Environmental Planning and Assessment Regulation 2000. As such, this clause is irrelevant to this proposal.

Clause 98D - The proposed use is described as a Pub. As a Pub is a prescribed use for the purpose of this Clause a condition will be imposed requiring the prominent display of a sign in the building stating the maximum number of persons permitted in the building. These numbers are calculated using the Building Code of Australia:

Lounge and Dining	- 161
Function room 1	- 67
Function room 2	- 69
Function room 3	- 74
Combined Function rooms	- 210

- *Likely Impacts of the Development:*

Section 79C(1)(b) of the EPA Act requires Council, as the consent authority, to have regard to the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts of the locality.

Consideration must also be given as to whether there is likely to be a significant effect on critical habitat, or threatened species, populations or ecological communities, or their habitats.

With regards to environmental impact, this includes not only the natural environment but also all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings. This planning consideration also includes impacts on both the natural and built environment, which could include implications on local traffic conditions, existing sewerage/water infrastructure, noise emissions, waste management, aesthetic impact on the local landscape, design of the building and its effect on the streetscape, etc.

In this particular case, the development and its potential impacts were all assessed to ascertain their degree of impact, whether or not measures to mitigate harm are needed and whether any impacts are unreasonable.

The main concerns highlighted by this assessment were:

- Traffic;
- On and off street car parking;
- Noise during operation;
- Aesthetic appeal of the proposed building works;
- Waste Management.

The following commentary is made with respect to the above matters:

Traffic

This site is located close to the Barrier Highway and Louth Road, which are routes for heavy vehicles and light vehicles passing through Cobar. Although this property is located in Lewis Street, the vehicular access point is located on the intersection of Louth Road and Lewis Street and within 50 metres to Nyngan Road (Barrier Highway).

Barrier Highway is also a RMS classified road, which triggered the need to seek comments from RMS. Comments were also sought from Councils Engineering Department.

A traffic analysis was undertaken by Traffic Solutions Pty Ltd on the impact on localised traffic conditions due to this development. The analysis found that the proposed development, as well as the existing operations of the site, were not likely to unreasonably alter existing traffic conditions despite an estimated increase in peak hour traffic flows.

The report provided by Traffic Solutions Pty Ltd was forwarded to RMS and Councils Engineering Department, who both raised no concerns with traffic generation in their attached correspondence.

On and Off Street Car parking

This proposal will encourage more patrons and staff to the site. Whilst the existing motel has off-street car parking, it is unlikely to be adequate in peak Hotel operating times.

In RMS' first response to Council, it sought additional information on car parking arrangements. This request was forwarded to the applicant. A traffic report, as earlier mentioned, by Traffic Solutions Pty Ltd was submitted clarifying the car parking arrangements for this development proposal.

The traffic report did state that there was an off-street car parking space deficiency, however this lack of parking spaces was considered by the traffic consultant to be reasonable on the basis that it was 'highly unlikely that that function rooms would be operating during Friday evening peak Hotel patron times'. This justification is flawed, as it contradicts other parts of the application such as the acoustic report, which allows for music to be played in the function rooms on Friday nights and the plan of management which also allows for entertainment/functions in this area until 2am on Fridays.

Despite the above concern, RMS raised no objection to the contents in the traffic report with respect to parking arrangements.

Councils Engineering Department has raised concern with insufficient car parking numbers and has sought for the shortfall to be addressed. This number was increased to include the additional parking needed for the additional 2 accommodation rooms.

Consequently, a condition will be imposed on the applicant to provide 34 additional off street car spaces on the site.

Noise During Operation

The proposed pub is likely to emit some levels of noise that are inconsistent with current noise levels experienced in that locality. Concern was raised early with the applicant as to how noise emissions would be managed during operation.

An acoustic report accompanied the development application comparing existing background noise levels to estimated and expected noise levels and recommending specific measures to mitigate impacts of noise and to enable the development to operate in an acoustically compliant manner.

The acoustic report found that the proposed development has the capacity to comply if recommendations presented in the report are implemented.

Whilst Council does not raise objection to the acoustic consultant's report, it will impose a reviewable condition on the consent that enable Council to consider varying operating hours of the Hotel should it consider that noise impacts caused by the development are unreasonable.

Aesthetic Appeal of the Proposed Building Works

The current front façade of the existing redundant restaurant building is considered to be undesirable. The façade design has not been structurally updated since the original construction of the building in 1966.

The proposed pub development seeks to remove front façade completely and extend the new front building façade closer to the front property boundary.

The new articulated façade design will include two covered deck areas, a partially enclosed gaming area and screened smokers lounge, which has been designed to meet the requirements of NSW Health with regards to smoking areas. This range of designed uses bounding the front boundary will be more aesthetically pleasing and benefit the existing streetscape and locality.

The southern side the building faces a rest stop and can also be viewed from the Barrier Highway. The designer has chosen to include large windows to service the functions rooms that are located on this side of the building. While the use of blockwork walls retains existing design qualities, the use of the large windows has reduced the bulky nature of these walls and is more desirable.

The Eastern façade will largely retain existing design qualities by utilising blockwork walls with a gable ended roof. The Northern façade also retains similar design styles to the existing building with some minor changes to the area directly behind the commercial kitchen, which include screening of this area for stored materials.

The design of the development is considered to be aesthetically pleasing and improves the existing streetscape. The Western (front) and Southern (side) facades are likely to encourage people to the site, versus the original design which was dated, and in the case of the Southern façade, shielded by overgrown vegetation.

Waste Management

Waste will be generated during the development and operational stages of this development.

A waste management plan accompanied the Development Application. This plan provided information on waste likely to be generated during demolition, construction and operation stages of the development.

Upon perusal of the waste management plan, it is considered that the waste volumes during the demolition and construction stages are under-valued and other information, such as disposal destinations are inadequate. Likewise the operation stage part of the plan assumes that there will be no changes to existing operations, which is incorrect.

This development will include demolition and civil works to the existing buildings, which will then be followed by the construction works. Both of these stages are likely to produce reasonable volumes of waste far greater than what is stated in the provided waste management plan.

Further, the operation of the pub will likely produce far greater quantities of waste than what is currently produced, largely because the restaurant has not been in operation for at least four years. Furthermore, the existing waste management practices are largely focused on disposal, rather than recycling. Although Council does not offer a recycling service, the applicant should seek ways to reduce certain types of waste rather than purely focusing on disposal options.

Concerns are still raised as to the proposed management of waste during the development of the project and during operation. However, it is considered that the development has the potential of managing waste properly, if it is planned properly. As such, a condition will be imposed on the consent requiring the submission of an amended waste management plan that proposes how waste will be managed during operation of the development. With regards to demolition and construction waste, a standard condition will be imposed that waste is to be frequently disposed of at the Cobar Waste Facility and not stored in an inappropriate location.

In addition to the above considerations, Section 79C1(b) also requires Council to consider the social and economic impacts of the development. The consideration of these two matters have been shaped by Court rulings, both State and Commonwealth jurisdictions.

With regards to economic impacts of development, a general principle is that a consent authority may not have regard to issues of commercial competition between a proposed development and business in a locality unless the efforts of such competition are likely to produce an overall community detriment by adversely affecting the availability or adequacy of services or facilities. In this development's case, there are no concerns raised with regards to potential or probable production of overall community detriment. In fact, it could be argued that the introduction of this new business will provide a wider variety of services and opportunities to the public, therefore imposing a positive economic impact on the community.

Social impact matters for consideration have also been shaped by case law. These considerations are not based on taste or morals, but rather on the possibility of a development imposing an unreasonable impact on the community with respect to community standards and expectations.

This development does have the potential of imposing an unreasonable impact on the community with regards to social outcomes and expectations due to gambling, possible unreasonable behavior and alcohol consumption.

These particular matters have been considered during the assessment of the application. The applicant has lodged a Plan of Management proposing a number of measures to appropriately manage the aforementioned issues.

In addition to the consideration of the Plan of Management, Council has referred the application to the NSW Police for comment (no response was tendered) and the application was placed on exhibition, with no comments from the community lodged relating to social impact matters.

Despite the above, it is recommended that a condition be imposed on the Development Consent, as a reviewable condition relating to hours of operation, allowing Council the possibility of reducing operable hours due to issues relating to noise or other unreasonable issues.

Overall it is considered that the social and economic impacts are acceptable on the basis that the development is compliant with Council consent.

- *Suitability of the site for development:*

This matter for consideration is very broad in nature and many factors need to be understood with respect to how the development will fit in to an environment in a suitable manner.

For this development, the applicant has described the site and its surroundings as well as detailing all facets of the proposal. The design is considered appropriate for the topography of the site and does not impose an unreasonable impact on the surrounding streetscape.

The applicant has demonstrated that the development, although within close proximity to residential areas, can operate in a reasonable manner that does not impose untenable conditions for a residential area. This has been demonstrated by combining appropriate building design, a plan of management and other measures to negate or significantly reduce potential impacts.

It is noted that the dining and alfresco dining areas are proposed to be open from 6am. This proposal has the possibility of impacting on residential amenity due to noise and increased traffic. Whilst the acoustic consultant has considered these opening hours and recommended that “patrons should be encouraged not to make unreasonable level of noise while in outdoor areas”, it is considered reasonable for Council to impose a requirement for the Plan of Management for the premises to be reviewed on a regular basis with regards to opening hours of the development so that if noise complaints are received regarding the early morning use of this area, Council has the ability to re-assess the use of this area during the certain hours in order to mitigate the impact on surrounding residents.

The proposed works are consistent with the theme, scale and height of many other developments in the surrounding area. The design of the external façade will considerably improve the streetscape in general by offering a more modern type of development.

All of the above matters constituted a consideration of the suitability of the site for the development.

- *Submissions:*

The consent authority must take into consideration in so far as relevant any submissions made in accordance with the Act or the regulations. The failure by a consent authority to take a submission into consideration may render the consent authority's decision void.

During the course of this assessment, Council considered all submissions made in response to this application. Submissions were received from another Cobar business, RMS and Councils Engineering Department. All submissions are attached to this report.

Following public exhibition, neighbour notification and referral of the application, the following submissions were received:

Response	Relating To
Roads and Maritime Services (RMS)	Traffic, car parking arrangements, outdoor signage and delivery vehicle movement.

Comment: RMS sought additional information in their first submission on traffic impacts, parking arrangements and delivery vehicle movements. This request was forwarded to the applicant, who then supplied a traffic management plan. This traffic management plan was forwarded to RMS for comment. RMS replied that they raised no further objections to the proposal.

Response	Relating To
Councils Engineering Department	Traffic, car parking arrangements, water and sewer levy, impact on water/sewer infrastructure.

Comment: Councils Engineering Department was forwarded the application, as well as the traffic management report. Their response confirmed that the proposal will not adversely impact on the local water/sewerage infrastructure and would be subject to water and sewer infrastructure levies. In addition, although this department did not raise concerns with traffic impacts, it did state that the numbers of proposed on-site car spaces was insufficient.

Response	Relating To
Proprietors of the Empire Hotel, Cobar	Objection to proposal relating to potential impact on their business.

Comment: This submission relates to a subject that is not considered to be a valid planning consideration. Commercial competition has been considered in a number of court cases, both in the NSW Land and Environment Court and the High Court of Australia, which have ruled that commercial competition is not a matter relevant to a planning consideration.

The matters raised in the submission as attached in Item 8 have been assessed in the preparation of this report and are considered to have insufficient merit to warrant refusal or amendment of the application having regard to such matters.

- *Public Interest:*

A consent authority must take into consideration in so far as relevant the public interest. The concept of public interest is wide, and when considering it, it is legitimate to consider the ultimate use to which a site is to be put.

Community response to a proposed development can be regarded as an aspect of public interest, so too is the application of ecologically sustainable development principles.

With respect to this development, Council provided increased opportunity for public involvement and participation by placing the application on public exhibition, notifying adjoining residents and business owners and referring the application to relevant authorities.

The ultimate use of the site, should this proposal be approved, would be motel accommodation and a pub. Both of these uses are currently provided already in Cobar and this proposal will compliment these and other businesses.

This proposal will assist in providing a more diverse range of services to the community, which will also assist in promoting the Cobar region in relation to tourism.

With regards to potential impact on residential amenity, the applicant has demonstrated that potential impacts like noise, anti-social behavior and traffic will be managed by incorporating specific measures to mitigate these issues. Also, additional carparking for patrons and staff will be provided on site.

Overall, it is considered that this proposed development is in the public interest.

ASSESSMENT CONCLUSION

The development proposed by this development application is considered to be consistent with the provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.

RECOMMENDATION

That Council resolve to determine Development Application 2017/LD-016 under Section 80(1) of the Environmental Planning and Assessment Act 1979 by granting consent subject to the following conditions:

- 1. The development must be carried out in accordance with the documents listed below, except where amended by other conditions of this consent:**

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- (i) An amended site plan detailing a carpark designed to comply with Australian Standard 2890- Parking facilities. At least 34 additional off-street car spaces shall be incorporated into this carpark design and shall allow for vehicles to enter and exit the carpark in a forward direction. The carpark shall include accessible car spaces at a rate applicable for the accommodation and pub complex as detailed in the Building Code of Australia.
 - (ii) Details of how deliveries will be managed on site. These details shall include frequency of deliveries, locations of external stored goods like beer kegs, crates and other materials that have been delivered or awaiting collection and how goods and deliveries/collections will be managed by staff.
 - (iii) An amended waste management plan that details how waste is to be managed during the operation of the pub. This plan shall be developed taking into consideration the NSW EPA's Better practice Guidelines for Waste Management and Recycling in commercial and industrial facilities.
8. A sign must be erected in a prominent position on any site on which building work is being carried out, identifying the following:
- a) The name, address and telephone number of the principal certifying authority for the work,
 - b) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c) Stating that unauthorised entry to the site is prohibited.
- Any such sign is to be maintained while the work is being carried out, but must be removed when the work has been completed.
9. The applicant must implement all practicable measures to prevent or minimise harm to the environment during the construction and operation of the development.
10. To ensure better management practices, the referenced Plan of Management must be reviewed by the Hotel Management on a regular basis following consultation with NSW Police and Cobar Shire Council. The plan of management, including the detailed hours of operation, is not a static document and is subject to review if required by Council on a twelve monthly basis or following consideration of a complaint relating to noise, anti-social behaviour, over-population of the venue or any other issue that impacts on the amenity of the surrounding locality.
11. No nuisance or interference with the amenity of the area is to be created by reason of any process or operation on the premises causing the emission of noise, dust, smoke or any polluted discharge whatsoever.

12. A contaminated land preliminary site investigation referencing the SEPP 55 Planning Guidelines must be undertaken in respect of this development site and recommendation from the investigation implemented as a condition of this consent. The preliminary site investigation is required to be prepared and lodged with and accepted by Council as satisfying the conditions prior to any demolition, civil or construction works commencing on site.

13. A sign must be displayed in a prominent position in the building stating the maximum number of persons that are permitted in the pub building pursuant to Clause 98D of the Environmental Planning and Assessment Regulation 2000. The maximum number of occupants (including staff) permitted in the building are as following:

Lounge and Dining	- 161
Function room 1	- 67
Function room 2	- 69
Function room 3	- 74
Combined Function rooms	- 210

The pub shall be managed in a way where maximum occupant numbers are not exceeded at any time.

14. Car spaces for staff, motel guests, patrons of the pub and accessible car spaces shall be appropriately delineated in both the existing carpark and the new carpark.

15. The use or occupation of the subject premises is not to commence until such time as the terms of Development Consent have been complied with to the satisfaction of the principal certifying authority (PCA). The use of/or occupation of incomplete premises is not permitted until the premises have been inspected by the PCA and an Occupation Certificate (interim or final) released.

16. The construction of the building or any demolition works, the subject of this development consent **MUST NOT** commence until:

- a) A Construction Certificate has been issued.
- b) A Principal Certifying Authority has been appointed.
- c) A notice of intention to commence work has been issued to Council as the consent authority at least two (2) days prior to the commencement of any construction works.
- d) Where greater than 10 square metres of asbestos material is to be removed, altered or disturbed, notify Safe-Work NSW at least 5 business days before hand.

17. The building work subject of this consent must be carried out in accordance with the requirements of the Building Code of Australia.

18. The existing commercial kitchen shall be upgraded to comply with the Food Act 2003 and the Food Standards Code.

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19. Appropriate site security fencing shall be erected to restrict unauthorised access to the construction site. This fencing shall be at least 1.8 metre high and erected in a way that it does not restrict public access or impose a risk to the public on footpaths or in the adjacent rest area.
 20. Prior to the release of a construction certificate, suitable plans shall be supplied to Council detailing the proposed system of managing stormwater from the new development.
 21. Prior to the release of the final occupation certificate, the following work shall be undertaken to the satisfaction of the Principal Certifying Authority:
 - a. Grading of the external ground;
 - b. Removal of the construction site fencing;
 - c. Repair of any damage to Councils or RMS infrastructure.
 22. Demolition of any structure shall be carried out in accordance with the requirements of AS 2601-2001.
 23. During the construction or demolition period, the person/s having benefit of the development consent shall ensure that:
 - a. There is provision of a trade waste service to ensure that all debris and waste material is removed from the site for the period of construction or demolition; and
 - b. All waste materials due for disposal generated during demolition and construction stages shall be disposed of at the Cobar Waste Facility; and
 - c. All plant equipment, fencing or materials of any kind is not placed or stored upon any public footpath or roadway; and
 - d. Any building work is to be carried out within the following hours:
 - i. Monday to Friday between 7am and 6pm and Saturday between 8am and 1pm. No work may be carried out on Sundays or public holidays.
 24. This consent does not approve any signage that is otherwise shown on the approved plans as referenced in condition 1. Any other proposed signage, that is not exempt development, will require separate development consent before installation.
 25. The operation of the venue shall adhere to the noise limits and noise mitigation measures recommended in the acoustic report prepared by Rodney Stevens Acoustics, report number R160038R1 dated 14 February 2017, otherwise varied by this consent.
 26. If the operation of the approved development causes serious environmental concern public nuisance or unreasonable disturbance to the quiet enjoyment of the neighbourhood then Council may require the owner or occupier to cease activities causing such conditions until abatement measures are implemented.

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27. Separate applications required under Section 68 of the Local Government Act 1993 for water supply and sewerage works and Section 138 of the Roads Act 1993 for any works in Lewis Street and/or Conduit Street.
28. All plumbing and drainage (water supply, sanitary plumbing and drainage, stormwater drainage and hot water supply) are to comply with the Plumbing and Drainage Act 2011.
29. The existing buildings under the terms of this consent must be brought into conformity with the following performance requirements of the Building Code of Australia:
- a. The existing fire separating walls between the existing motel rooms shall be upgraded to comply with CP2 of the current Building Code of Australia.
 - b. Accessible carparking must be provided on the site to comply with DP8 of the Building Code of Australia.
 - c. Accessible accommodation units must be provided to comply with DP1 of the Building Code of Australia.
 - d. Access paths from accessible carparking spaces are to be provided to facilitate movement to the principal public entrance of the pub, the motel reception and any other unique facilities as per DP1 and DP2 of the Building Code of Australia.
 - e. The existing motel rooms shall have a smoke hazard management system installed to comply with EP2.1 of the current Building Code of Australia.
 - f. The base of the ramp on the northern side of the building that leads from the screened deck at the rear of the kitchen shall have installed an appropriate barrier (such as bollards) so as to prevent the blockage of the egress discharge point DP4 of the current Building Code of Australia.
 - g. The latch installed on the exit door from the existing commercial kitchen shall be upgraded to comply with DP4 of the Building Code of Australia.
 - h. The existing portable fire extinguishers and fire blankets installed in the existing commercial kitchen shall be upgraded to comply with EP1.2 of the Building Code of Australia.
 - i. The existing cool room in the kitchen area shall be upgraded to comply with the current Building Code of Australia as detailed in GP1.3 of the Building Code of Australia.
 - j. The barrier provided to the existing swimming pool shall be upgraded to comply with NSW GP1.2 of the Building Code of Australia.
 - k. A fire hydrant system complying with EP1.3 of the Building Code of Australia. This system may include on-site water storage facilities and pump-sets, where required to achieve compliant flows and pressures.

REASONS:

1. To ensure the proposed development:

- a) Achieves the objects of the *Environmental Planning and Assessment Act 1979*;
- b) Complies with the provisions of all relevant environmental planning instruments.

2. To ensure the protection of the amenity of land adjoining and in the locality of the proposed development.

3. To minimise any potential adverse environmental, social or economic impacts of the proposed development.

4. To ensure the development does not conflict with the public interest.

ATTACHMENTS



EXTRAORDINARY MEETING AGENDA

THURSDAY 10 AUGUST 2017

~ REFERENCE TO ATTACHMENTS ~

PART A – ACTION

Page Number

Clause 1A – Copper City Hotel and Motel Development Application 28-202