

DEVELOPMENT ASSESSMENT REPORT – DA061/21 - PROPOSED RETROSPECTIVE REAR ALFRESCO DECK, ADDITIONAL SEATING AND BAR, Lot 2 DP 1077295, 67 BRIDGE STREET LITHGOW

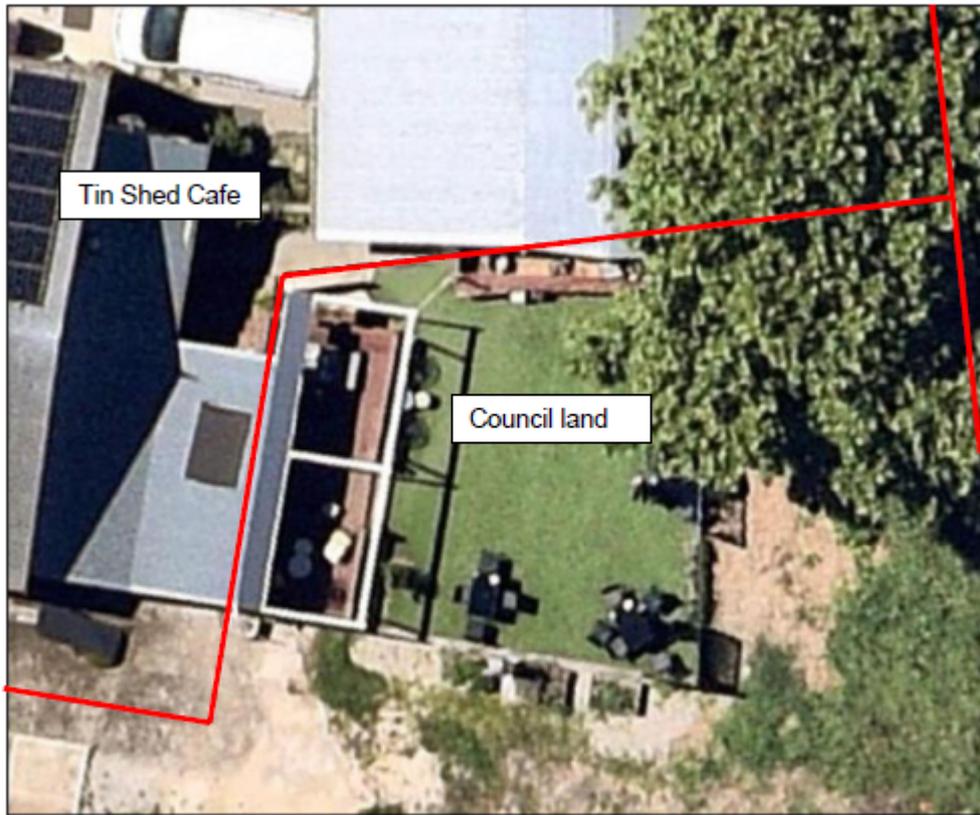
1. PROPOSAL

Council is in receipt of a Development Application DA061/21 from Kenwood Industries Pty Ltd for a retrospective rear alfresco deck, additional seating and bar on land known as Lot 2 DP 1077295, 67 Bridge Street LITHGOW.

The land on which the development has been constructed is classified 'community land' owned by the Council and contains the Union Theatre. The deck and an adjoining ground level dining area is associated with the Tin Shed Café located on the adjoining land at 69 Bridge Street, Lithgow (Lot 1 DP 1077295).

The deck has been constructed of timber and is on piers. It is covered by a pergola with a retractable canvas awning. The deck has seating for 12 people. The adjoining ground level dining area has a synthetic grass cover and is bounded in part by screens and landscaping. Seating for 14 people is provided in this area.

A bar area has also been constructed along the northern boundary of the lot. The operator of the Tin Shed Café has advised that the bar is not located on Council land but has provided no evidence to substantiate this claim. An examination of the aerial photography overlaid with cadastral mapping indicates that the structure is on Council land. The shed at the rear of 69 Bridge Street also appears to encroach onto Council land.



Photos of the works undertaken appear below.



Photo 1 – Alfresco deck



Photo 2 – Seating in garden area, screens and planter boxes



Photo 3 – Bar area

A detailed survey will be required to establish the precise location of all development relative to Council land.

The applicant has indicated that the al-fresco deck, seating and bar area are proposed to be used during the following hours:

- Monday to Friday 6.30am to 3.00pm
- Saturday and Sunday 8.00am to 3.00pm
- occasional events outside of these hours.

The operator will require a new or amended liquor licence for the sale and/or consumption of alcohol in the al-fresco deck area, bar area and adjoining ground level dining area.

2. SUMMARY

To assess and recommend determination of DA061/21 with recommendation for approval subject to conditions.

3. LOCATION OF THE PROPOSAL

Legal Description : Lot 2 DP 1077295
Property Address : 67 Bridge Street LITHGOW

The location of the proposal is shown in the following map:



4. ZONING

The land is zoned B2 Local Centre under the *Lithgow Local Environmental Plan 2014* (LEP).

5. PERMISSIBILITY

The proposed use is associated with a restaurant or cafe (defined below) which is permitted with consent on land zoned B2 Local Centre under the LEP provisions.

***restaurant or café** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.*

Note—

*Restaurants or cafes are a type of **food and drink premises**—see the definition of that term in this Dictionary.*

5.1 POLICY IMPLICATIONS

Policy 7.6 – Development Applications by Councillors and Staff or on Council Owned Land

Policy 7.6 states as follows:

That, subject to the exemptions in Part 2 of this Policy, the following development applications shall be referred to Council for consideration and determination:

- a. Any development application lodged where the applicant is a Councillor or a member of Council's Executive staff or immediate family thereof*
- b. Where a Councillor or member of Executive staff, or their immediate family, is the owner of the land to which the application relates*
- c. Where the development application is on Council owned land*
- d. Where the application is on Crown land managed by Council*
- e. Any application that proposes to dedicate land or an asset to Council if the recommendation is for approval of that application.*

The subject land is owned by Council. There are no exemptions in the Policy relating to Council owned land. The application will therefore be reported to Council for determination.

The subject land is classified as Community Land. Council's Property Officer has advised that Council is able to grant a lease over community land under the Local Government Act 1993 for a maximum period of five years. There is no ability to extend or renew such a lease.

The operator of the Tin Shed Café has been made aware of this limitation on the granting of a lease. Should the lease be granted, the operator would commence discussions with Council over the potential to reclassify the land to operational land and possibly then purchase the land from Council to facilitate a longer-term use of the land as outdoor dining for the café. This process involves an amendment to the Lithgow *Local Environmental Plan 2014* in addition to following the processes under the *Local Government Act 1993* for the reclassification of land.

Lithgow Community Participation Plan

The Lithgow Community Participation Plan applies to all land within the Lithgow Local Government Area (LGA) and prescribes certain types of development as exempt from

requiring notification. The proposal is not listed as exempt from requiring notification and was therefore notified to adjoining land owners in accordance with the Plan.

5.2 FINANCIAL IMPLICATIONS

Section 94A (Section 7.12) Development Contributions Plan 2015

Council's Section 94A (Section 7.12) Development Contributions Plan 2015 exempts an application for an industrial, retail or commercial development where there is no intensification of use or increase in floor space of an existing building. While the proposal does not increase the floor space of the building, it is considered an intensification of use through the additional seating capacity.

However, the Plan does not apply to this development given it is for a deck area at an estimated cost below \$100,000, using the below levies:

Estimated cost of development	Levy applicable
\$0 to \$100,000	0%
\$100,001 to \$200,000	0.5%
\$200,001 and over	1%

5.3 LEGAL IMPLICATIONS

Conveyancing Act 1919

There are no covenants or easements on the land that would be affected by the proposed development.

Local Government Act 1993

As noted above, a lease can be granted to a use over Community Land for a maximum period of five years, subject to certain conditions and procedures, such as public exhibition of the proposed lease. Should Council grant consent to this development application, a condition would be imposed requiring the applicant to enter into a lease with Council.

Biodiversity Conservation Act 2016

No native vegetation has been or is proposed to be removed to facilitate the development.

Environmental Planning and Assessment Act 1979

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. These matters for consideration are as follows:

5.3.1 Any Environmental Planning Instruments

Lithgow Local Environmental Plan 2014

LEP 2014 – Compliance Check		
Clause		Compliance
Land Use table	B2 Local Centre	Yes
5.10	Heritage conservation	Yes
7.10	Essential Services	Yes

Comment: The objectives of the B2 Local Centre zone are as follows:

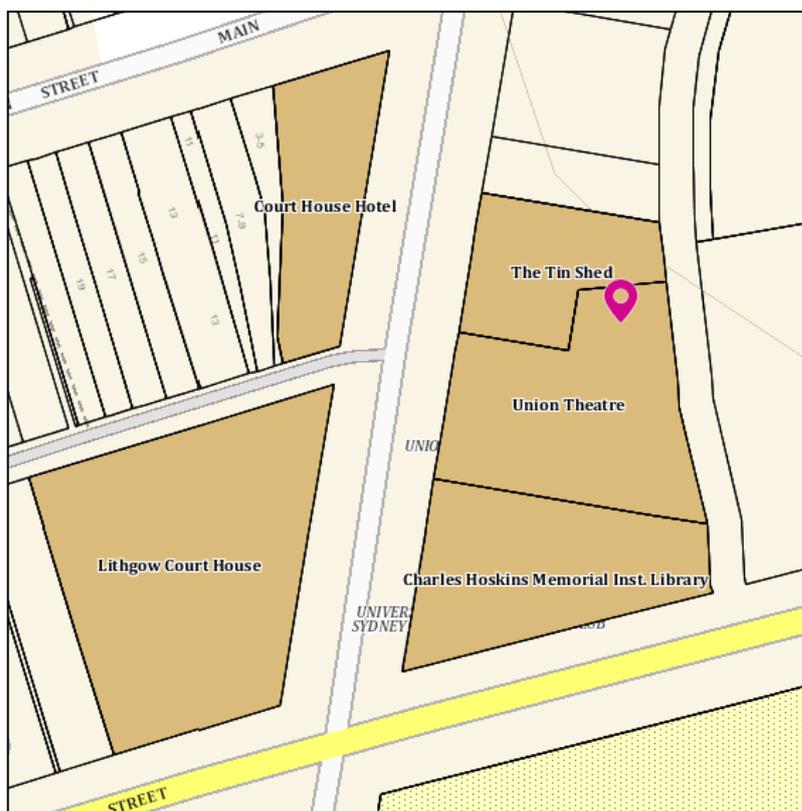
- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To maintain the built integrity of the area by enabling development that is sympathetic to the heritage character and significance of the area and surrounding streetscapes and features.*
- *To maintain or improve the water quality of receiving water catchments.*

The proposal is associated with an existing approved commercial use of the adjoining land at 69 Bridge Road, being a restaurant/cafe and facilitates the ongoing operation of that use and the local employment that it provides. The site is well located in relation to available public transport, including buses and trains and can be easily accessed by walking and cycling. The works are located at the rear of the building and have little detrimental effect on the heritage significance of the Tin Shed or the Union Theatre. The proposal will have no detrimental impact on water quality.

The proposal is considered to be consistent with the objectives of the B2 zone.

Clause 5.10 Heritage Conservation

The subject land and the adjoining land to which the development relates are both listed as local heritage items in the Lithgow LEP 2014. The subject land contains the Union Theatre and the adjoining land contains the Tin Shed. This site is also in proximity to other heritage items, including the Court House Hotel, The Lithgow Court House and the Charles Hoskins Memorial Inst. Library. An extract of the heritage map in LEP 2014 is shown below.

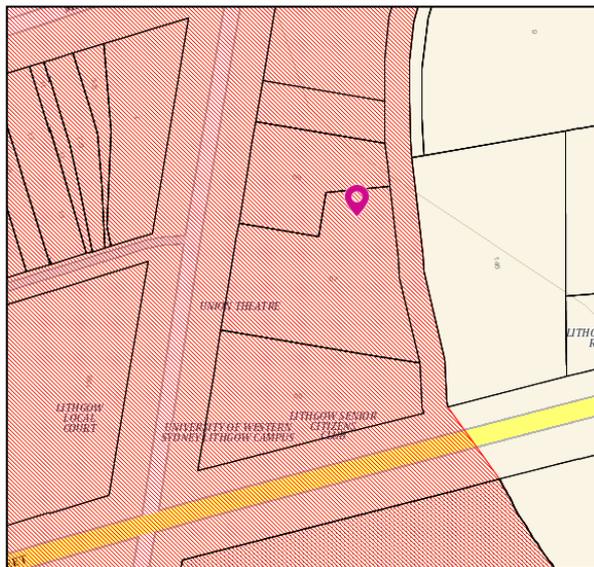


In relation to the Union Theatre land, the development is located on a part of that site not directly related to the theatre building. The development has no detrimental impact on the Union Theatre.

In relation to the Tin Shed, the development is attached to the rear of the building. The works are open, constructed of timber and are considered to be sympathetic to the character of the Tin Shed building.

In relation to the other heritage items in the vicinity of the site, the development is not visible from any of those items and will therefore have no detrimental impacts.

The site is also located in a heritage conservation area, as shown below:



The development is not visible from Bridge Street and has no detrimental impact on the heritage conservation area.

The development is considered satisfactory with regard to heritage.

Clause 7.10 Essential Services

The site is connected to all essential services and no changes are proposed or required.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The proposal has been assessed using the NorBE tool with a result of satisfied, demonstrating that the proposal will have a neutral or beneficial effect on water quality.

NorBE Assessment

General Information

DA number **DA061/21**
 Assessing officer **Mark Hitchenson**
 Council **Lithgow City**
 Development class **Retail/office - sewerred**
 Date of assessment **06/04/2021**

Lot	Section	Plan
2		1077295

Assessment Summary

NorBE status	Determined	User outcome	Satisfied
System outcome	Satisfied	Determination date	06/04/2021
SCA concurrence outcome			
Determination outcome	Granted		

Pre-Assessment

Located within Sydney drinking water catchment?	Yes
Is development consistent with any existing SCA S88 instruments on title?	N/A
Crown perpetual leasehold land?	No
Water quality impact ?	No
Documentation is complete?	Yes
Does Water Cycle Management Study meet SCA/Council requirements?	Yes

State Environmental Planning Policy No 55—Remediation of Land

The subject land has a long history of community and commercial activities and there is no known previous activity that is likely to have caused contamination. The site is considered suitable for the proposed use.

5.3.2 Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

Nil.

5.3.3 Any Development Control Plan

The draft Lithgow DCP was not in force at the time this application was submitted. However, an assessment has been carried out against the requirements of the draft DCP with the proposal found to be generally compliant.

5.3.4 Any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4?

No.

5.3.5 Any matters prescribed by the regulations that apply to the land

Nil

5.3.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Adjoining Landuse: The surrounding land uses are commercial and community uses with the proposal being compatible with these uses. The proposal will not cause land use conflicts.

Services: The site is connected to all essential services and no changes are proposed or required.

Context and Setting: The development is located within an established commercial area and will have no major impact on the context and setting of the area. The development has been designed to complement existing features of similar development in the area.

Access: The proposal does not impact on existing access to the site.

Heritage: The proposal has no detrimental impacts on the heritage items located on the subject land and on adjoining land, or on the heritage conservation area.

Social and Economic Impact: The proposal represents a suitable use of land that is otherwise unused, associated with an existing adjoining business. While the use is a private business on public land, this can be authorised by Council by way of a lease following public exhibition processes. Should Council grant consent to the development and enter into a lease agreement with the operator, the proposal will add to the dining experiences available in the Lithgow CBD. It is therefore expected that positive social and economic impacts will result.

Soils: The proposal has no detrimental impacts on soils and the site is not expected to be contaminated.

Water: The proposal has no detrimental impact on surface or groundwater.

Air and Microclimate: The proposal has no significant impact on air quality or microclimate.

Waste: The proposal does not change existing waste management arrangement for the associated business in the Tin Shed.

Natural Hazards: The subject land is not bushfire or flood prone.

Noise and Vibration: The proposal is not located in proximity to any sensitive receivers. The external dining area is proposed to be used during daylight hours, with occasional events outside of these hours. Subject to a condition limiting the hours of operation, the proposal is considered satisfactory with regard to noise impacts. There are no vibration issues associated with the proposal.

5.3.7 The Suitability of the site for the development

The surrounding land uses are for commercial pursuits with the size and nature of the development consistent with those in the surrounding area. The development will have minimal impact to the surrounding amenity. The development complies with the objectives of the zone and the site is considered to be suitable for the proposal.

5.3.8 Any submissions made in accordance with this Act or the Regulations

COUNCIL'S BUILDING OFFICER

Council's Building Officer has assessed the proposal and has offered the following comments:

1. Existing encroachments & unauthorised structures on Council land

An identification survey should be submitted to clarify the extent of any building encroachments by the Tin Shed's associated structures on Council land. The survey should be reviewed in conjunction with any lease agreement.

The attached unauthorised pergola structure and timber deck should be demolished at the expiry of any lease over Council land.

A Certificate of Structural Adequacy prepared by a professional engineer should be submitted in respect to the unauthorised timber deck for review in conjunction with any lease agreement.

2. Demarcation of Leased Area / Public Safety

To address any Council liability associated with the use of any leased area and the adjoining Union Theatre, and to demarcate the area of land that may be the subject of any lease agreement, a suitable barrier (fence) should be erected along the line that aligns with a projection of the external wall plane associated with the southern side of the Tin Shed premises. Such demarcation will also assist with safe egress of persons using the Union Theatre in the event of fire.

The operation of the existing gate that is situated along the Bridge Street alignment (across the shared driveway) does not facilitate safe egress in the event of a fire in the Union Theatre given that it is currently padlocked and opens inwards (against the direction of egress). In conjunction with this proposal, this gate should be modified so that it swings outwards and is fitted with a latch device that complies with D2.21 of NCC2019.

Conditions relating to the above matter have been included in Schedule A.

PUBLIC SUBMISSIONS

No submissions were received to the notification of the development application.

5.3.9 The public interest

The public interest is best served by the orderly and economic use of land for permissible uses and that does not impact unreasonably on the use and development of surrounding land.

The use of the Council owned community land for the proposed purpose for a limited period of five years is considered to be in the public interest as it provides a suitable use of land that is otherwise unused. Whether the proposal is in the public interest in the longer term will be determined through any proposal to reclassify the land to operational land, taking into account any community submissions made to that proposal.

6. DISCUSSION AND CONCLUSIONS

The proposal is considered to generally comply with the relevant provisions of the applicable Environmental Planning Instruments. The proposal is not considered likely to have any significant negative impacts upon the environment or upon the amenity

of the locality. As such it is recommended that development consent is issued subject to the conditions outlined below.

7. ATTACHMENTS

Schedule A- Conditions of consent.

8. RECOMMENDATION

THAT development application DA061/21 is approved subject to conditions set out in Schedule A.

Report prepared by: Mark Hitchenson Supervisor: Paul Cashel

Signed:..... Signed:.....

Dated:..... Dated:.....

REASONS FOR CONDITIONS

The conditions in Schedule A have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To ensure the structural integrity of the development.
- To ensure the protection of the health and safety of the occupants of the development.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts.
- To ensure there is no unacceptable impact on the water quality.

Schedule A

Conditions of Consent (Consent Authority)

Please Note: It should be understood that this consent in no way relieves the owner or applicant from any obligation under any covenant affecting the land.

ADMINISTRATIVE CONDITIONS

1. That the development be carried out in accordance with the application, Statement of Environmental Effects, accompanying information, plans listed in the approval and any further information provided during the process unless otherwise amended by the following conditions.

Plan No.	Plan Name	Rev	Date
A	Site Plan		Undated
B	Detail Plan		Undated

2. This development consent is conditional upon, and at all times subject to, the applicant having a legal right to occupy that part of Lot 2 DP 1077295 the subject of this development consent. As Council is the landowner, a legal right may be established by entering a lease with Council on terms suitable to Council. Any proposed lease will be for a maximum term of five years with no ability to extend or renew the lease and be subject to the payment of market rent and public exhibition.
3. This consent is limited to a period of 5 years from the date of approval, unless the subject land has been reclassified to operational land within the 5 year period and a longer term lease arrangement has been secured.
4. The al-fresco deck and the adjoining ground level area and bar shall only be used for dining purposes in association with the adjoining Tin Shed Café and shall be limited to the following hours of operation:
 - 6.30am – 3.00pm Monday to Friday
 - 8.00am – 3.00pm Saturday and Sunday.

The use of the subject area for occasional events is permitted, up to a maximum of 52 days in any period of 12 months as per clause 2.8 Temporary Use of Land under Council's Local Environmental Plan 2014. The operation of such activities shall be limited to the approved hours of operation of the Tin Shed, being:

- 5.30am – 10.00pm Mondays to Fridays
 - 7.30am – 12.00 midnight Saturdays
 - 7.30am – 10.00pm Sundays.
5. The maximum number of patrons permitted in the al-fresco deck and adjoining ground level area for dining purposes is 30. For event purposes, the maximum number of patrons permitted in the subject area is 50.
 6. The bar area is only permitted to be used during events and shall only be used to serve pre-packaged food and drinks.
 7. The operator shall obtain an appropriate liquor licence for the sale and/or consumption of alcohol in the al-fresco deck area, the bar area and the adjoining ground level area.

8. All exterior lighting associated with the development shall be designed and installed so that no obtrusive light will be cast onto any adjoining property.
9. The LA10* noise level emitted from the premises shall not exceed the background noise level in Octave Band Frequency (31.5Hz – 8kHz inclusive) by more than 5dB at the boundary of any affected premises.
10. Prior to the finalisation of any lease agreement in respect to the use of Council land:
 - a) An identification survey is to be submitted for the review of Council in respect to any building encroachments associated with the applicant's land onto Council land;
 - b) A written undertaking is to be submitted by the applicant committing to the removal of the unauthorised pergola and timber deck structures from Council land at the expiry of any lease agreement;
 - c) A Certificate of Structural Adequacy prepared by a professional engineer is to be submitted for the review of Council in respect to the unauthorised timber deck.
11. To minimise Council's liability in respect to the use of any leased area and the adjoining Union Theatre premises, and to demarcate the area of land that may be the subject of any lease agreement, a suitable barrier (fence) shall be erected along the projected alignment of the southern external wall plane associated with the Tin Shed premises. Prior to finalisation of any lease agreement specific details are to be submitted for the review of Council.
12. Upgrade the existing gate that is situated along the Bridge Street alignment (across the ROW / shared driveway) so that it facilitates safe egress in the event of a fire for persons using the Union Theatre. In this regard the gate is to swing outwards, is not to encroach onto the Bridge Street road reserve and is to be fitted with a latch device complying with D2.21 of NCC2019 Vol 1.

ADVISORY NOTES

- AN1. The outdoor dining area will be subject to NSW Health regulation under the Smoke Free Environment Act 2000. The operator of the outdoor dining area should familiarise themselves with the relevant guidelines at the NSW Health website.