



Late Reports



Item: 6.1 **Ref:** WO/2022/02541
Title: Development Application 10.2021.36 – Alterations and Additions to a Supermarket – W Bryan
Author: Contract Town Planner
Previous Items: Not Applicable
Attachments: **Under Separate Cover:**
Development Assessment Report, Plans, Submission, Statement of Environmental Effects & Response from Traffic for NSW

Community Strategic Plan Reference:

- Goal 3.2** – *The public health and wellbeing of the community will be protected and enhanced.*
- Goal 6.1** – *Walcha’s distinct and diverse natural and built environment will be protected and enhanced.*
- Goal 6.6** – *The character of Walcha and its surrounding villages will be maintained while protecting the productivity of our rural land.*
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RECOMMENDATION: That Council refuse Development Application 10.2021.36 for the alterations and additions to a supermarket on Lot 1 DP 996429 known as 16W-26W Fitzroy Street, Walcha, as:

1. This development is considered to be an over development of the site.
 2. There is no onsite carparking for the supermarket customers.
 3. The cumulative impact of both a hardware shop and supermarket, both traffic generating developments, will create parking congestion within Fitzroy Street creating traffic and pedestrian hazards.
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Introduction:

Council has received a development application for 16W-26W Fitzroy Street, Walcha, for the alterations and additions to supermarket. This is permissible development under the *Walcha Local Environmental Plan, 2012*.

Consideration by Council is required due to a submission being made in the form of an objection and that the applicant has provided an application with just enough information for an assessment but not enough detailed information to have an assessment of impact without making assumptions.

A copy of the development assessment report, site plan, submissions and letter requesting additional information is attached for Council’s consideration.

Report:

This application is for the extension and internal alterations to a supermarket. The proposed alterations consist of:



1. The relocation of the existing liquor outlet into the adjoining office area and the existing liquor area being converted into supermarket retail space.
2. The construction of a rear addition that will be 26.865m x 27.63m, totalling 742.30m². This will be constructed from colourbond trimdek walls and roof. This will contain more supermarket retail area, storage and freezer/cool rooms.

Below shows the floor area changes

	Existing	Proposed	% Change
Liquor	212m ²	193.8m ²	-9.4%
Supermarket	568m ²	901.2m ²	+58.66%
Office/Storage/Coolroom	315m ²	450m ²	+42.86%
Total	1,095m²	1,545m²	+41.1%

The hours of operation will remain the same, and are from 8.00am until 7.00pm Monday to Friday, 8.00am until 6.00pm Saturday and 8.00am until 5.00pm Sunday.

The land also hosts a hardware shop that has a retail and storage area of 800m². They currently have 3 full time staff employed onsite at any one time. Their existing hours of operation are 7.00am until 7.00pm Monday to Friday, 7.00am until 1.00pm Saturdays and closed on Sundays.

The exact number of existing carparks onsite has not been identified as there is no defined/marked carparking area. However, the applicant states that there will be 16 onsite carparks to be utilised by the supermarket and, hardware shop staff and the customers of the hardware shop. It is also proposed that the hardware shop utilise 6 carparking spaces on the adjoining leased land. No supermarket customers will utilise the onsite carparking as there is no rear customer entry / exit.

The internal layout of the supermarket has been poorly presented, therefore the assumption has been made that amenities and office space has been included in the new addition.

No demonstration of compliance with the *Disability (Access to Premises - Buildings) Standards 2010* has been provided.

Neighbour notification was required, as per the provisions of the *Walcha Community Participation Plan 2020*. It was carried out twice with the second notification period being for the modified plans; with 1 submission being received raising the issues of dust and garbage. These are historical issues with the existing supermarket and usage of the laneway. These are discussed within the Development Assessment Report.

This development was referred to Traffic for NSW (TfNSW) as Fitzroy Street is a classified road. Their comments presented a list of recommendations for Council consideration. They were:



1. *TfNSW recommends that Council be satisfied that the development application has clearly identified and addressed all impacts on the surrounding road network, taking into consideration all transport modes and road safety. Council should seek further information to inform a determination and any conditions of development consent.*
2. *TfNSW recommends that Council obtain updated plans demonstrating swept paths for the largest design vehicle requiring access to the site. The design vehicle should be demonstrated entering, manoeuvring and leaving the development site from all directions. Council should be satisfied that heavy vehicles can safely access and service the proposed development, and that any potential conflict between vehicles and people will be appropriately managed.*
3. *The site, accesses, internal manoeuvring, servicing and parking areas will be designed in accordance with the relevant sections of AS2890 and Council's requirements. Council should be satisfied that the development will provide adequate car parking capacity for the existing and proposed developments. It must be demonstrated that the largest design vehicle is able to enter, leave and manoeuvre through the site to service areas in a forward manner. If this is not able to be achieved then alternative arrangements should be required to manage public safety.*

TfNSW recommends that the development plans be updated to clearly demonstrate all existing and proposed infrastructure within the site boundaries and on adjoining public road reserves.

4. *A Construction Traffic Management Plan (CTMP) should be prepared and implemented to address construction impacts on surrounding roads, including consideration for public footpaths. Where construction traffic is likely to impact vehicle and/or pedestrian movements along Fitzroy Street, then a Traffic Guidance Scheme/s (TGS) prepared and implemented by suitably qualified persons should be included in the CTMP. Prior to the implementation of any TGS within the travel lanes of the Oxley Highway a Road Occupancy Licence (ROL) must be obtained from by submitted a required to the ONLINC online system. Refer to the TfNSW [website](#) for further details.*
5. *Any regulatory signs and devices needed to support the development will require the endorsement of the Local Traffic Committee prior to Council approval. Please refer to A guide to the delegation to councils for the regulation of traffic.*

TfNSW highlights that in determining the application under the Environmental Planning and Assessment Act 1979, it is the Consent Authority's responsibility to consider the environmental impacts of any roadworks which are ancillary to the development. This includes any works which form part of the proposal and/or any works which are deemed necessary to include as requirements in the conditions of project approval.



The biggest issue relates to the provision of onsite carparking and cumulative impact. Basically, the hardware shop and supermarket are considered to be traffic generating development. This is supported by the recommendations from TfNSW.

The Walcha Development Control Plan 2019 Clauses 8.6 contains controls regarding parking. Compliance cannot be met and the proposed onsite carparking would require a 66.% variation. However, Council should note that in regard to parking provision, Clause 8.6(3) states:

Car-parking spaces are to be provided on the same lot as the proposed development. Multi-lot land holdings may require consolidation to comply with this control. (Reason: To ensure car parking remains annexed to the approved development.)

Car-parking spaces are to be provided on the same lot as the proposed development. It is proposed that the hardware shop utilise parking at the rear on the adjoining lot. As this lot does not have the same legal owner of the development lot, and that it is not legally tied to the development lot, those spaces cannot be taken into consideration as part of the planning assessment.

Additional parking spaces required for any new development or redevelopment shall comply with the controls of this chapter and Table: Off-street Parking Rates.

Business Premises rate is 1/60m²

The whole site needs to be considered, therefore the existing supermarket and hardware shop should cater for 31 onsite carparks.

Supermarket	1095
Hardware	<u>800</u>
Total	1895m²

The proposed redeveloped supermarket and hardware shop should cater for 39 onsite carparks.

Supermarket	1545
Hardware	<u>800</u>
Total	2345m²

The applicant has argued that only the new development should comply with the provisions of the DCP and that 16 onsite carparks are a suitable number. However, these carparks are for staff and the customers of the hardware store only. There will be no onsite parking for the supermarket customers. The new addition cannot be considered as a standalone development, due to the cumulative impact created onsite.



It has been argued that the on-street parking is suitable for the supermarket, though these parks are in front of other businesses in the street, including another supermarket. No onsite parking will create parking congestion on the street which will decrease traffic and pedestrian safety and will increase frustration from loss of on street parking for the other businesses fronting Fitzroy Street and possibly Derby Street.

Accessible car parking spaces are to be provided in accordance with the Disability (Access to Premises - Buildings) Standards 2010.

No accessible parking has been provided onsite.

A full development assessment was undertaken with the recommendation of refusal due to the lack of information for a complete assessment of impact and non compliance.

Conclusion:

After a meeting with the applicant regarding the originally submitted development proposal, the applicant has redesigned and reduced the proposed building footprint to allow for truck manoeuvring, defined onsite carparking, and have looked at the whole site (included the hardware shop) in their proposal. However, the percentage of the variation is so high, by approving the development with no customer onsite parking, it may set a dangerous developer and community expectation for the consideration of future developments.

Morally a redeveloped supermarket will be an asset to the community and socially. Past planning trends have shown that redevelopment of a major CDB contributor such as a supermarket sets the community development standard and, will lead to other businesses following suit and upgrading in the future.

Therefore, to address the obvious over development of the site, Council may ask for a further redesign addressing the issue of onsite carparking provision and further assessing the cumulative impact of both traffic generating businesses. This is a feasible option which considers the possible impact and long term impact to the development of the Walcha CDB.

To approve the application would be to make a variation to Council's Development Control Plan. Development control plans contain controls that are not legally binding on decision makers, unlike local environmental plans, though they do contain the local development controls that Council has considered acceptable and achievable for the Walcha LGA, and which will apply against all future development.



To have no onsite customer carparking for a development that may one day be the only one of its type and will stand in place indefinitely, will set a perceived perception by future developers that Council will have difficulty arguing against for future development, and particularly in the Land and Environment Court.

It is well established case law that previous planning decisions are capable of being material considerations, meaning that they may need to be taken into account by those determining subsequent applications, as like developments should be decided in a like manner so that there is consistency. Consistency is self-evidently important to both developers and determining authorities, but it is also important for the purpose of securing public confidence.

If the recommendation of refusal is overturned, appropriate development conditions will be needed to address the highlighted outstanding issues as per the attached development assessment report.

Legal Implications:

Consideration under the provisions of *Environmental Planning and Assessment Act 1979*, *Walcha Local Environmental Plan 2012*, *Walcha Development Control Plan 2019* and the *Walcha Community Participation Plan 2020* has been undertaken.

Under the provisions of Sections 8.2, 8.3, 8.4 and 8.5 of the *Environmental Planning and Assessment Act 1979*, an applicant may request the Council to review the determination.

If the applicant is dissatisfied with this decision to refuse, Sections 8.7 and 8.10 of the *Environmental Planning and Assessment Act 1979* gives them the right to appeal to the Land and Environment Court within six (6) months after the date on which they receive their notice of determination.

If Council chooses to approve the application, the applicant may apply to modify the consent under Section 8.7 and 8.10 of the *Environmental Planning and Assessment Act 1979*.

Financial Implications:

Nil

Environmental Implications:

To approve the redevelopment without customer onsite parking and to have such a large variation to the *Walcha Development Control Plan 2019* will result in increased parking congestion within Fitzroy Street and will lead to increased traffic and pedestrian safety issues. It will also set a future developer and community expectation for over development within the CBD is acceptable that will have a resulting impact on Council provided infrastructure such as carparking. This would mean that the



developer will have the economical gain and the community will have the economical imposition of finding further on street carparking to ease parking congestion, traffic and pedestrian safety.

There will be no increased employment opportunities for the community.

This will lead to either the supermarket on the opposite side of Fitzroy Street either upgrading in competition or eventually closing. This would reduce competition and, leave a monopoly business.

Social Implications:

The redevelopment and upgrading of a supermarket is considered to be a positive impact for the community.

Policy Implications:

A major variation (66%) of Council's local development controls will create a large developer and community expectation for future development within the Walcha CBD and will make it difficult for Council to apply this development control in the future.