

Bayside Planning 22/05/2018
Panel

Item No 6.2

Application Type Development Application

Application No DA-2016/401/B

Lodgement Date 22/01/2018

Property DA-2016/401/B - 1/18 Market Street, Rockdale

Ward Rockdale

Owner Maroun Pty Ltd
Applicant Mr K Ibrahim

Proposal Modification to conditions 5 and 9 relating to extension of

trading hours to 6am to 12 midnight Monday to Sunday and

removal of non-smoking sign on Brays Lane

No. of Submissions Thirty Six (36) submissions were received.

Cost of Development N/A

Report by Adam Iskander, Development Assessment Planner

#### Officer Recommendation

That the Section 4.55 Application No.DA-2016/401 for modifications to conditions 5 and 9 relating to extension of trading hours to 6am to 12 midnight Monday to Sunday and removal of non-smoking sign on Brays Lane be APPROVED pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

2 That the objectors be advised of the Bayside Planning Panel's decision.

#### **Attachments**

- 1 Bayside Planning Panel Report 1 18 Market Street, ROCKDALE
- 2 Mechanical service plan view SKM-01
- 3 Mechanical service side elevation SKM-03
- 4 Mechanical services plan view 2
- 5 Statement of Design Compliance 1
- 6 Statement of Design Compliance 2

### **Location Plan**



# **BAYSIDE COUNCIL**

# Planning Assessment Report

# **Application Details**

**Application Number:** DA-2016/401/B **Date of Receipt:** 22 January 2018

**Property:** 1 / 18 Market Street, ROCKDALE (Lot 106 SP 79582)

Owner: Maroun Pty Ltd
Applicant: Mr Karam Ibrahim

**Proposal:** S96 Application - Modification to conditions 5 and 9 relating to extension

of trading hours to 6am to 12 midnight Monday to Sunday and removal of

non-smoking sign on Brays Lane

**Recommendation:** Approved

**No. of submissions:** Thirty Six (36) submissions were received. Thirty one (31) of these

submissions were submitted as a pro-forma letters.

Author: Adam Iskander Date of Report: 27 April 2018

# **Key Issues**

The key issues related to this application are:

 Thirty Six (36) submissions predominately related to amenity impacts (noise, smoking and loitering on public property) and nature of the use.

# Recommendation

That Development Application No DA-2016/401/B, being a Section 4.55(1A) application to amend Development Consent Number DA-2016/401, for the modification to conditions 5 and 9 relating to extension of trading hours to 6am to 12 midnight Monday to Sunday and removal of non-smoking sign on Brays Lane at 1/18 Market Street, Rockdale be APPROVED and the consent amended in the following manner:

- A. By amending condition no. 2, 5, 6 and 9 to read:
- 2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

| Plan/Dwg No.                        | Drawn by     | Dated     |
|-------------------------------------|--------------|-----------|
| Mechanical service plan view SKM-01 | Not authored | Not dated |
| Mechanical service plan view SKM-02 | Not authored | Not dated |

| Mechanical services - Section from | Not authored | Not dated |
|------------------------------------|--------------|-----------|
| Brays Lane SKM-03                  |              |           |

- 5. The hours of operation of the approved use shall be restricted to between 6.00am and 11.00pm Sundays to Thursdays and 6am to 12am Friday and Saturdays.
- 6. The use of the premises, building services, equipment, machinery, mechanical exhaust fans and ancillary fittings shall not give rise to an 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act, 1997.
- 9. No smoking is permitted on Brays Lane. Smoking should only be carried out inside the premises.
- B. Imposition of the following conditions 4a, 4b, 9a, 9b, 9c, 9d and 9e:
- 4a A Construction Certificate must be obtained for the proposed works associated with DA-2016/401/B.
- 4b Prior to the use of the mechanical ventilation system, the applicant is to obtain an Occupation Certificate pertaining to the works associated with application DA-2016/401/B
- 9a The proposed development shall be designed, constructed and operated in compliance with the requirements of the Smoke-free Environment Act 2000 and the Smoke-free Environment Regulation 2016.
- 9b Smoking is prohibited within 4 metres of a pedestrian entrance to or exit from the commercial business.
- 9c The consumption of food is prohibited in any outdoor smoking area.
- 9d Signage shall be displayed indicating where smoking is not permitted.
- 9e The proposed development shall be designed, constructed and operated in compliance with the requirements of the Food Act 2003, Food Regulation 2015 and the Australian Standards AS 4674-2004 "Design, Construction and Fit out of Food Premises".

# **Background**

### **History**

Council's records show that the following applications were previously lodged:

• DA- 2013/326 for change of use for a delicatessen which was approved on 19 July 2013.

- DA- 2016/401 for the extension of awning facing Brays Avenue, increase seating capacity to 28 seats outside and 32 seat inside a total of 60 seats and extend hours of operation to 11pm, 7 days a week was approved 25 July 2016; and
- DA-2016/401/A for modification to application comprising changes to wording on the plans and clarification of seating capacity of 60 seats was approved 12 January 2017.

Council had been in contact with the applicant throughout the assessment process and was instructed to provide additional information including an acoustic report for the use of the mechanical ventilation system and amended architectural drawings to clarify the location of the exhaust vents and location of the wooden louvres facing Brays Lane. A final acoustic report was submitted to Council on 15 March 2018 and the final architectural drawings were submitted 23 April 2018.

### **Proposal**

Council is in receipt of a development application DA-2016/401/B at 1 / 18 Market Street ROCKDALE NSW 2216, which seeks consent to carry out the modification to conditions 5 and 9 relating to extension of trading hours to 6am to 12 midnight Monday to Sunday and removal of non-smoking sign on Brays Lane

Specifically, the proposal consists of:

- To extend the approved operating hours from 6am 12pm Monday to Sunday (original consent granted approval for hours operation between 6am-11pm Monday to Sunday);
- Deletion of condition 9 "No smoking is permitted on Brays Lane.";
- Three (3) external exhausts grills above out-door dinning;
- One (1) internal exhaust grill located in dinning area;
- Louvred windows servicing indoor dining area facing Brays Lane;
- Wooden louvred fence fronting Brays Lane spanning 12.35m with a maximum height of 2.3m.

### Site location and context

The existing commercial tenancy is located on the southern corner of Brays Lane and Market Street, Rockdale. The subject site forms part of a mixed use development consisting of one hundred and three (103) x residential units and six (6) x commercial tenancies on ground floor with basement parking. The entire building has frontages facing Market Street, Pitt Lane, George Street and Brays Lane and comprises of four separate buildings reaching eight (8) to nine (9) storeys in height. Council had approved the mixed-use development on 23 June 2004 under Development Application No. 2004/718.

Existing on site is a vacant shop, previously used as a cafe operating between the hours of 6am to 11pm Monday -Sunday. The shop has approval for outdoor dining. All other shops within close proximity consist of an accounting firm, a medical centre and a coffee shop. The surrounding uses include a public car park across the road to the east, cafes and shops along Kings Lane and 'Sir Braxtons Chocolate Bar' on the corner of Market Street and Bryant Street which has trading hours operating from 6am to 10.30pm/11.00pm Monday to Sunday.

# **Statutory Considerations**

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

### S4.55 (1A) - Modification

Section 4.55(1A) of the Environmental Planning & Assessment Act 1979 states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent if:

a) It is satisfied that the proposed modification is of minimal environmental impact, and

Comment: the proposed modifications are minor in nature, including deletion of conditions relating to out-door smoking and increase in trading hours by one hour. In this regard, the proposed modifications are of minimal environmental impact subject to suitable conditions being imposed.

b) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

Comment: The application is for minor modifications to the development consent. The proposal remains as previously approved, namely a cafe in a mixed use development. The proposed modifications will not change the land use or substantially alter the nature of the development. As such it is considered substantially the same development.

- c) it has notified the application in accordance with:
- (i) the regulations, if the regulations so require, or
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment: The application has been notified in accordance with the provisions of Council's DCP 2011.

d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: Five (5) submissions and one pro-forma submission with thirty one (31) signatures. The concerns have been addressed later in this report.

S4.55(3) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

S4.55(3) of the Environmental Planning and Assessment Act 1979 states:

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

An assessment of the application has been carried out under the provisions of Section 4.15 of the

Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered. The following is an assessment of the proposed development under the provisions of Section 4.15(1) of the Environmental and Planning Assessment Act.

# S4.15 (1) - Matters for Consideration - General

### S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

#### **Rockdale Local Environmental Plan 2011**

| Relevant clauses         | Compliance with objectives | Compliance with standard/provision |
|--------------------------|----------------------------|------------------------------------|
| 2.3 Zone B2 Local Centre | Yes                        | Yes - see discussion               |

#### 2.3 Zone B2 Local Centre

The subject site is zoned B2 - Local Centre under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as commercial premises which constitutes a permissible development only with development consent. The objectives of the 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.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To accommodate population growth through high density mixed use development that complements the role of retail, commercial, civic and cultural premises in the Rockdale town centre.
- To create a lively Rockdale town centre with an amenable and pedestrian focused public domain activated by building uses that engage with the street.

The proposed development is consistent with the objectives of the zone.

# S4.15(1)(a)(ii) - Provisions of any Draft EPI's

No relevant proposed instruments are applicable to this proposal.

# S4.15 (1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

#### **Rockdale Development Control Plan 2011**

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

| Relevant clauses                              | Compliance with objectives | Compliance with standard/provision |
|---|----------------------------|------------------------------------|
| 4.2 Streetscape and Site Context -<br>General | Yes                        | Yes - see discussion               |
| 4.4.5 Acoustic privacy                        | Yes                        | Yes - see discussion               |

| Relevant clauses          | Compliance with objectives | Compliance with standard/provision |
|---------------------------|----------------------------|------------------------------------|
| 4.6 Parking Rates - Shops | Yes                        | Yes - see discussion               |

#### 4.2 Streetscape and Site Context - General

The proposal is located in a B2 Local Centre Zone. The immediate context is relatively Low, medium and high scale, consisting of mixed use developments, residential flat buildings, commercial buildings, a parking lot and local businesses.

The application proposes wooden louvres along Brays avenue, spanning 12.35m with a maximum height of 2.3m to reduce the impacts of noise onto the above adjoining residential units. Further, louvred windows are proposed to the windows servicing the indoor dinning area. These changes will not significantly impact the streetscape character to Brays Lane as it consists of large driveways and side entries to the adjoining buildings. The wooden louvres will be visible from Market Street, however, the streetscape of Market Street consist of large setbacks to mixed use buildings, large driveways to access basements, back entries of commercial businesses and a Council owned parking lot. The built form will not be deteriorated by the proposed development. It should be noted that there is no existing pattern of development in this street as there is no established streetscape with strong stylistic or architectural features or identity.

As such, the proposed wooden louvres is a minor addition and is assessed as having minimal impacts onto the streetscape character.

#### 4.4.5 Acoustic privacy

The application proposes the extension of operating hours to 12am Monday to Sunday (originally approved with hours from 6am to 11pm Monday to Sunday). The previous application approved seating to the cafe for 60 customers with 28 seats outside and 32 inside with an extended awning structure facing Brays Avenue to cover patrons from the weather and reduce noise impacts onto the adjoining neighbours. Concerns have been raised by the adjoining neighbours located in the units above relating to noise. The premises will not sell alcohol and does not host functions requiring loud music. Further, the use is similar to that which was originally approved as a cafe-deli operating till 11pm at night.

It is noted that the neighbouring restaurant at 55/13-19 Bryant Street 'Sir Braxtons Chocolate Bar' has approved hours of operation from 7am to 11pm Monday to Sunday and Shop 4/18 Market Street has consent granted for the previous cafe to operate 6am to 10.30pm Monday to Sunday

Further, an acoustic report has been submitted with the application for the proposed exhaust system and has concluded that the exhaust system complies with all relevant noise guidelines and criteria in accordance with the General Industrial Noise Policy.

Taking the above into consideration, it recommended that the hours of operation be kept to the approved hours of 6am to 11pm Sunday -Thursday and Friday and Saturday from 6am to 12am. This will ensure that the amenity of the adjoining neighbours will be maintained during the week without compromising the viability of the cafe.

Several conditions of consent will remain from the previous application ensuring no loud music is to be played after 9pm and that the use should not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environmental Operations Act, 1997.

Subject to the recommended conditions of consent, the proposal satisfies Part 4.4.5 of RDCP 2011.

### 4.6 Parking Rates - Shops

There is no increase in floor space with the proposed modifications. As the use of the shop is maintained as a cafe, the application does not require additional parking. According to Control 4 of Part 4.6 of RDCP 2011 a calculation of historical deficiency in parking is applied as a credit to the parking calculation. The additional hours of operation as recommended in this report doe snot increase the intensity of the proposed use, nor its capacity.

Furthermore, to the east of the subject site is a Council owned Parking Lot which can provide additional parking for patrons of the shop. Taking the above into consideration, the application satisfies Part 4.6 of RDCP 2011.

### S4.15(1)(a)(iv) - Provisions of regulations

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

### 4.15(1)(b) - Likely Impacts of Development

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed are as follows:

#### **Smoking**

The applicant has sought approval to delete condition 8 "No smoking is permitted on Brays Lane" as the tenant of the shop proposes to sell shisha (also known as hookah), which is an instrument for vaporising and smoking flavoured tobacco where the vapour or smoke which is released is passed through water.

According to the smoke-free Environment Act 2000, smoking is not permitted in a commercial outdoor dinning area, being:

- a seated dinning area,
- within 4 metres of a seated dinning area on a licensed premises, restaurant or cafe; and
- within 10 metres of a food fair stall.

A 'seated dining area' is identified under the Act as a business which provides food and seating in an outdoor area where food is being eaten. The food must have been served or packaged with the intent to be eaten straight away. It should be noted that smoking is permitted on licensed premises, however they cannot be located within 4 metres of the seated out-door dinning areas where food is being consumed or within 4 metres of a pedestrian entrance to or exit from a building.

The applicant has proposed to serve shisha when the kitchen is closed, so as to not serve food and also proposes no smoking within 4 metres of entry/exists into the shop.

The applicant proposes to install a ventilation system to absorb the vapour released from the shisha to reduce the vapour from leaving the premises. The ventilation system consists of three exhausts grill located externally in the dining area facing Brays Lane and one internal exhaust grill located in the back dining room which has new louvred windows facing Brays Lane. The exhaust system will dilute and filter

the air before discharging to Brays Lane and the ventilation being supplied to the customers will be double that of the Australian Standard quantity. The mechanical ventilation system will be designed in accordance the relative Building Codes of Australia and Australian Standards which will form part of the conditions of consent.

Council's Health officer had raised some concerns regarding noise generated from the new ventilation equipment, and as a result, the applicant was asked to submit an acoustic report. An acoustic report was submitted 15 March 2018 and concluded that "Noise emissions from the existing mechanical plant comply with all relevant criteria"

As such, the applicant has proposed a ventilation system which will reduce the impacts of vapour onto the adjoining residential units and has provided evidence that the mechanical system will not generate unreasonable levels of noise.

Council's Health Officer has recommended conditions of consent which will regulate the use of the serving of Shisha in accordance with the Smoke-free Environment Act 2000 and the Smoke-free Environment Regulation 2016.

As the serving of shisha is located entirely within the subject site and not on Council's property or on Brays Lane, the deletion of condition 9 'No smoking is permitted on Brays Lane' is unnecessary. It shall remain that the action of smoking on Brays Lane is prohibited as to not cause a nuisance to the residents above the cafe. All smoking is contained within the site.

### S4.15(1)(c) - Suitability of the site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

# S4.15(1)(d) - Public submissions

The development has been notified in accordance with the provisions of Rockdale DCP 2011 and thirty six submission has been received (thirty one of these submissions were submitted as a pro-former). The issues raised in the submission are discussed below:

**Issue 1:** Deletion of condition 9 'No smoking is permitted on Brays Lane' will encourage smoking on the foot path and create substantial nuisance to residents, impacts on the health of neighbouring residents, litter and noises from customers congregating.

**Comment:** All smoking associated with shisha will be located on site and not on public land. Three external exhaust grills are provided in the out-door dining area and one exhaust grill provided internally to absorb any vapour released from the use of sisha which will reduce vapour from entering into the adjoining residential units. It is recommended that the hours of operation be limited to 12am Friday and Saturday nights rather than the proposed operating hours of 12am Monday-Sunday. As part of the original consent, no music is to be played on site after 9pm. Further, the application will be conditioned to be constructed and operated in compliance with the requirements of the Smoke-free Environment Act 2000 and the Smoke-free Environment Regulation 2016. As such, the applicant has provided substantial design modifications to reduce the impacts of out-door smoking onto the

surrounding neighbours.

It should be noted that the deletion of condition 9 is not been supported as the applicant has not proposed to smoke on Brays Lane but wholly within their property.

**Issue 2**: Customers will obstruct footpaths and ramp entrances to 8-12 Market Street which is a security risk for residents and safety risks to the customers.

**Comment:** It is not anticipated that customers would obstruct driveway ramps of adjoining buildings. All services provided by the cafe will be served on site. A louvred screen will be constructed along Brays Lane which will contain customers with the site and reduces the likelihood for loitering on Brays Lane or adjoining driveways. It is considered that the proposal will not create a safety risk to neighbours or to the customers of the cafe.

**Issue 3:** Operating hours will impact daily life of residents above, increase anti-social behaviour and traffic:

**Comment:** The operating hours have been approved to 11pm, Monday - Sunday under the previous Development Application DA-2016/401. The applicant has requested operating hours from 6am to 12am Monday - Sunday. To minimise the impacts onto the adjoining properties, the extended operating hours will be limited to Friday and Saturday nights to maintain the existing amenity of adjoining neighbours and without comprising the viability of the business. It should be noted, that a condition has been placed in the recommendations of consent that no music is to be played on site after 9pm and that the additional operating hours has only been extended by one hour on Friday night and Saturday night.

**Issue 4:** The applicant is not transparent with the use as it is different from what was previously there 'Greek cafe'

**Comment:** The use of the site will be maintained as a cafe. The proposed modifications constitute substantially the same development (use) to that approved.

**Issue 5:** Will council be responsible for monitoring the filtration systems to the proposed mechanical vents?:

**Comment:** To ensure that the mechanical vents are routinely maintained and up to standards, a condition has been set in the draft notice of consent that the the proposed development shall be designed, constructed and operated in compliance with the requirements of the Smoke-free Environment Act 2000 and the Smoke-free Environment Regulation 2016.

# S4.15(1)(e) - Public interest

The proposed development is considered satisfactory having regard to the objectives and requirements of Rockdale Local Environmental Plan 2011 and Development Control Plan 2011. Impacts on adjoining properties have been considered and addressed. As such it is considered that the proposed development is in the public interest.

# **Schedule 1 - Draft Conditions of consent**

#### **General Conditions**

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

- 1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
- 2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

| Plan/Dwg No.   | Drawn by     | Dated     | Received by Council |
|--|--------------|-----------|---------------------|
| Mechanical service<br>plan view SKM-01                     | Not authored | Not dated | 4 April 2018        |
| Mechanical service<br>plan view SKM-02                     | Not authored | Not dated | 4 April 2018        |
| Mechanical services -<br>Section from Brays<br>Lane SKM-03 | Not authored | Not dated | 4 April 2018        |

[Amendment A - S96(1A) amended on 18 April 2018]

- 3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
- 4. A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.
- 4a. A Construction Certificate must be obtained for the proposed works associated with DA-2016/401/B.

[Amendment A - S96(1A) inserted on 18 April 2018]

4b. Prior to the use of the mechanical ventilation system, the applicant is to obtain an Occupation Certificate pertaining to the works associated with application DA-2016/401/B.

[Amendment A - S96(1A) inserted on 18 April 2018] Reason for additional conditions 4a and 4b is:

• To ensure that the proposed works are constructed in accordance with the relative Australian Building Codes and Australian Standards as stated within the two (2) Statement of Design Compliance by HHH Consulting and dated 21 January 2018 and 2 February 2018.

### **Development specific conditions**

The following conditions are specific to the Development Application proposal.

- 5. The hours of operation of the approved use shall be restricted to between 6.00 am and 11.00 pm Sundays to Thursdays and 6am to 12am Friday and Saturdays.
  - [Amendment A S96(1A) amended on 18 April 2018]
- 6. The use of the premises, building services, equipment, machinery, mechanical exhaust fans and ancillary fittings shall not give rise to an 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act, 1997
  - [Amendment A S96(1A) amended on 18 April 2018]
- 7. The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy 2000.
- 8. No music is to be played after 9pm Monday to Sunday.
- 9. No smoking is permitted on Brays Lane. Smoking should only be carried out inside the premises.
  - [Amendment A S96(1A) amended on 18 April 2018]
- 9a. The proposed development shall be designed, constructed and operated in compliance with the requirements of the Smoke-free Environment Act 2000 and the Smoke-free Environment Regulation 2016.
  - [Amendment A S96(1A) inserted on 18 April 2018]
- 9b. Smoking is prohibited within 4 metres of a pedestrian entrance to or exit from the commercial business.
  - [Amendment A S96(1A) inserted on 18 April 2018]
- 9c. The consumption of food is prohibited in any outdoor smoking area.
  - [Amendment A S96(1A) inserted on 18 April 2018]
- 9d. Signage shall be displayed indicating where smoking is not permitted.
  - [Amendment A S96(1A) inserted on 18 April 2018]
- 9e. The proposed development shall be designed, constructed and operated in compliance with the requirements of the Food Act 2003, Food Regulation 2015 and the Australian Standards AS 4674-2004 "Design, Construction and Fit out of Food Premises".
  - [Amendment A S96(1A) inserted on 18 April 218]

Reason for additional condition 9a, 9b, 9c, 9 and, 9e a is:

• To ensure smoking and serving of food on site is in accordance with the relative Acts, Regulations and Australian Standards

#### Prior to issue of the construction certificate

The following conditions must be completed prior to the issue of the Construction Certificate.

- 10. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
  - i. A Footpath Reserve Restoration Deposit of \$2,508.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
  - ii. An environmental enforcement fee of 0.25% of the cost of the works.
  - iii. A Soil and Water Management Sign of \$17.50.
- 11. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
- 12. Compliance with Council's Development Control (DCP) 2011 in relation to requirements for access. Compliance with this condition will require the design and fitout of the commercial/retail areas to be in accordance with Australian Standard 1428.1-2009.

**Note:** Compliance with Council's Development Control Plan (DCP) 2011 and the Building Code of Australia does not necessarily guarantee that the development meets the full requirements of the Disability Discrimination Act (DDA) 1992. It is the responsibility of the applicant to make the necessary enquiries to ensure that all aspects of the DDA legislation are met.

13. Prior to the issue of the Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to Principal Certifying Authority for assessment and approval. Design certification, in the form specified in Rockdale Technical Specification Stormwater Management, and drainage design calculations are to be submitted with the plans. Council's Rockdale Technical Specification Stormwater Management sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the development site, including the final discharge/end connection point, must comply with Rockdale Technical Specification Stormwater Management.

### Prior to commencement of works

The following conditions must be completed prior to the commencement of works.

- 14. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
- 15. A sign must be erected in a prominent position on any work site on which work

involved in the erection or demolition of a building is being carried out:

- i. 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.

  Any such sign is to be removed when the work has been completed.

  This condition does not apply to:
- iii. building work carried out inside an existing building or
- building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.
- 16. A hoarding or fence shall be erected between the work site and the public place when the work involved in the erection or demolition of a building:
  - i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
  - ii) building involves the enclosure of a public place,

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless, the least horizontal distance between the common boundary and the nearest part of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure, type B Hoarding, and the facing facade protected by heavy duty scaffolding unless either:

- (i) the vertical height above footpath level of the structure being demolished is less than 4m; or
- (ii) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must -

- (i) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary;
- (ii) have a clear height above the footpath of not less than 2.1m;
- (iii) terminate not less than 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface; and
- (iv) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa

The 'B' Class hoarding is to be lit by fluorescent lamps with anti-vandalism protection grids.

Any such hoarding, fence or awning is to be removed when the work has been completed.

The principal contractor or owner builder must pay all fees and rent associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

# **During demolition / excavation / construction**

The following conditions must be complied with during demolition, excavation and or construction.

17. A copy of the Construction Certificate and the approved plans and specifications

- must be kept on the site at all times and be available to Council officers upon request.
- 18. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being carried out on Sundays and all public holidays.
- 19. For Class 5-9 structures, the building works are to be inspected during construction, by the principal certifying authority (or other suitably qualified person on behalf of the principal certifying authority) to monitor compliance with Council's approval and the relevant standards of construction encompassing the following stages:
  - i. after excavation for and before the placement of, any footing, and
  - ii. prior to covering any stormwater drainage connections, and
  - iii. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Documentary evidence of compliance with Council's approval and relevant standards of construction is to be obtained prior to proceeding to the subsequent stages of construction and copies of the documentary evidence are to be maintained by the principal certifying authority and be made available to Council officers upon request.

20. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.

### Prior to issue of occupation certificate or commencement of use

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

- 21. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
- 22. A suitably qualified Plumber shall certify that the existing plumbing work complies with the NSW Code of Practice: Plumbing and Drainage and Australian Standard AS3500.

#### **Roads Act**

23. Construction related activities must not take place on the roadway without Council approval.

Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit.

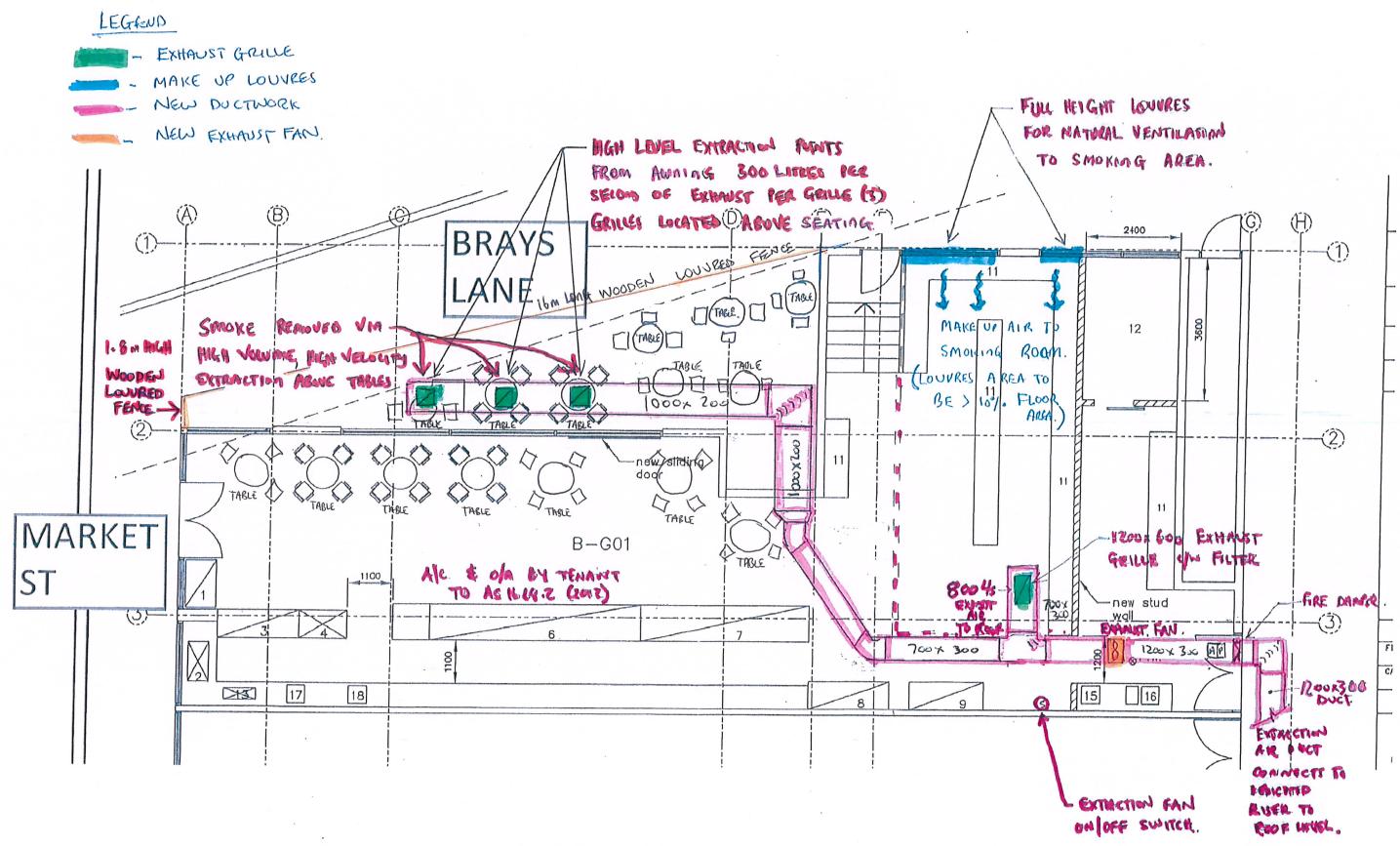
Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Works Zone signs by Council's Traffic and Road Safety Section.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

- 24. Where applicable, the following works will be required to be undertaken in the road reserve at the applicant's expense:
  - i) construction of a concrete footpath along the frontage of the development site;
  - ii) construction of a new fully constructed concrete vehicular entrance/s;
  - iii) removal of the existing concrete vehicular entrance/s, and/or kerb laybacks which will no longer be required;
  - iv) reconstruction of selected areas of the existing concrete Footpath/vehicular entrances and/or kerb and gutter;
  - v) construction of paving between the boundary and the kerb;
  - vi) removal of redundant paving;
  - vii) construction of kerb and gutter.
- 25. All driveway, footpath, or road and drainage modification and/or improvement works to be undertaken in the road reserve shall be undertaken in accordance with Council's Subdivision and Civil Works Construction Specification (AUS-SPEC 1). Amendment to the works specification shall only apply where approved by Council. Where a conflict exists between design documentation or design notes and AUS-SPEC 1, the provisions of AUS-SPEC 1 shall apply unless otherwise approved by Council.
- 26. The awning shall be designed by a Chartered Professional Engineer (Structural). Note: Awnings are required to be set back a minimum of 600 mm from the kerb face and be a minimum height of 2.4 metres above the footpath level. Drainage from the awning shall be connected to the stormwater system for the development.

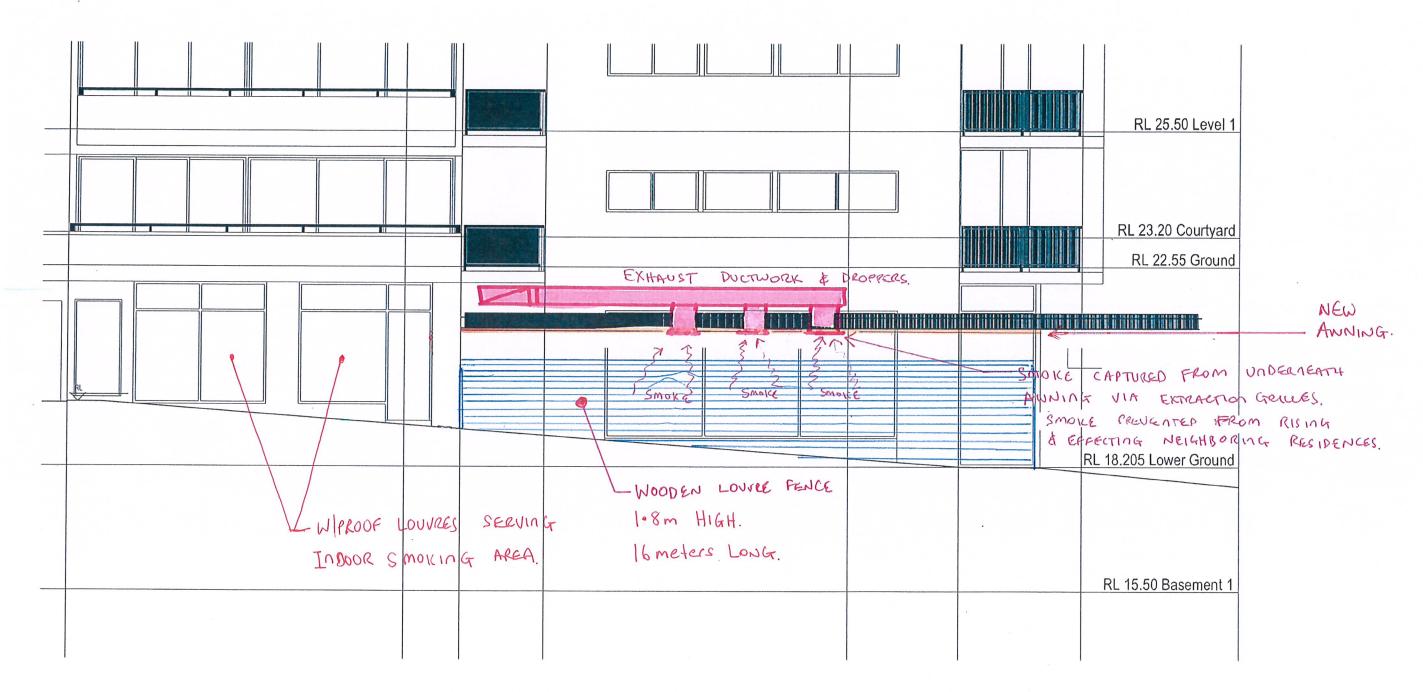
### **Development consent advice**

- a. You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- b. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.



SKM-01

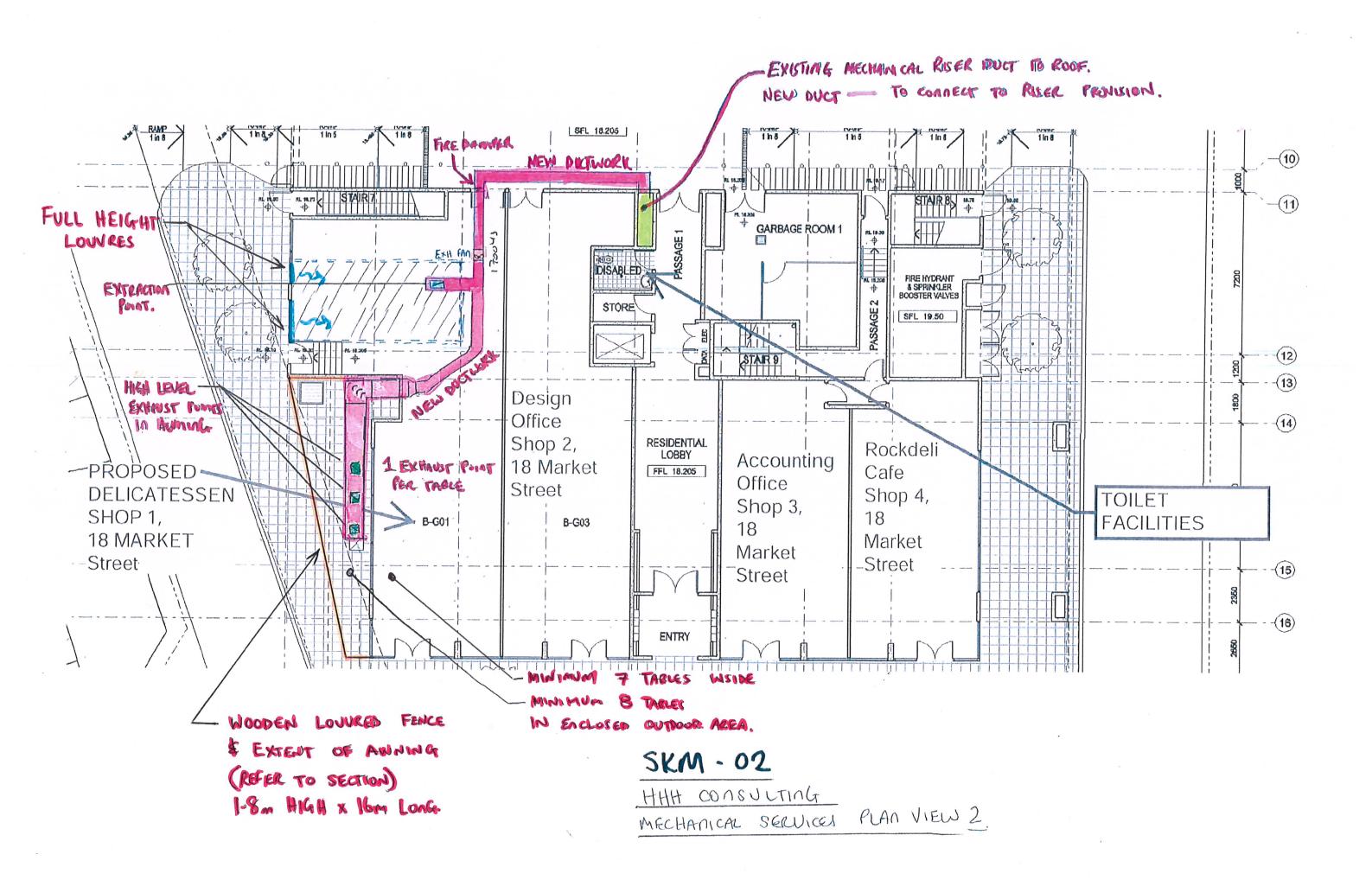
HHH CONSULTING MECHANICAL SERVICES PLAN VIEW



SKM-03

HHH CONSULTING

MECHANICAL SERVICES - SECTION FROM BRAYS LANE



# STATEMENT OF DESIGN COMPLIANCE



Project: El Greco Deli Café, Rockdale

Address: Shop 1, 18 Market Street Rockdale NSW 2216

Pursuant to the provisions of Clause A2.2 of the Building Code of Australia, I hereby certify that the above premises mechanical services design intent (Refer to SKM-01, SKM-02, SKM-03) is in accordance with normal engineering practice and meets the requirements of the National Construction Code Series 2016 Volumes 1 & 3 (Building Code of Australia). In particular the design is in accordance with the following:

- 1. Habitable areas mechanical ventilation design in accordance with Clause F4.5, of BCA 2016 and AS1668.1 (2015) and AS1668.2 (2012).
- 2. Air-conditioning and ventilations systems designed in accordance with Part J5 of BCA 2016
- 3. Air handling equipment and condensate drainage designed in accordance with AS3666 (2011).
- 4. Flexible and rigid ductwork designed in accordance with AS4254 (Parts 1 and 2)

In addition the following design features are provided to ensure surrounding building intakes/openings are not affected by the café;

- Exhaust air from the café will be diluted and filtered appropriately before discharging to Brays Lane
- High velocity discharge and an awning above the louvre to direct air away from the building
- Outside air ventilation rate being supplied to café occupants shall be double the AS Standard quantity.

Full name of Certifier: Phillip Hangyasi

**Qualifications and Experience:** Adv. Dip Mechanical Engineering

Masters. Design Science (Bld. Services)

MIE AUST,

Address of Certifier: Rockdale NSW

Signature: Date: 21/01/18

# STATEMENT OF DESIGN COMPLIANCE



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- 4. Flexible and rigid ductwork designed in accordance with AS4254 (Parts 1 and 2)

In addition the following design features are provided to ensure surrounding building intakes/openings are not affected by the café;

- Exhaust air from the café will be captured via high velocity, high volume grilles within the awnings and appropriately discharges to Roof level via a dedicated internal riser
- Smoke extraction and use of the awning will ensure the smoke air is directed away from the remainder
  of the building.
- Outside air ventilation rate being supplied to café occupants shall be double the AS Standard quantity.

Full name of Certifier: Phillip Hangyasi

**Qualifications and Experience:** Adv. Dip Mechanical Engineering

Masters. Design Science (Bld. Services)

MIE AUST,

Address of Certifier: Rockdale NSW

Signature: Date: 20/03/18