

NOTICE TO APPLICANT OF DETERMINATION
OF A DEVELOPMENT APPLICATION

Issued under the *Environmental Planning & Assessment Act, 1979* Section 81(1)(a)

TO: T J Pyne Superfund
OF: C/- RuralPlan Consultants
PO Box 5
Glen Innes NSW 2370

being the applicant in respect of **Application No DA-111/2019**

Notice is hereby given of the determination by Council of **Application No. DA-111/2019** relating to the land owned by **Wernbut Pty Ltd, of PO Box 355, Inverell NSW 2360** and is described as follows:

Lot 1 DP 1149224, 143-147 Byron Street, INVERELL 2360

The development proposal is:

Demolition of Existing Commercial Buildings and Construction of a Two-Storey Mixed Use Premises.

The Determination is **consent granted subject to conditions described below** made on **17 January 2020**.

This consent expires five (5) years from the date on which it commences to operate in accordance with Section 83 of the Environmental Planning and Assessment Act 1979 unless the work to which it relates has physically commenced on site within that period. Where the approval relates to a use of the land rather than to the carrying out of works then that use must have commenced on site within that five year period.

The conditions of consent are set out as follows:

Preliminary

1. Inverell Shire Council issues its consent, subject to conditions stated hereunder, in accordance with Section 4.17 of the *Environmental Planning and Assessment Act 1979*.

Consent is granted for the following development on Lot 1 DP 1149224:

- Demolition of the timber and steel commercial premises and disused toilet block;
- Construction of a two storey mixed use premises;
- Use of the ground floor premises at a "Medical Centre" and two "Business Premises";
- Use of the upper floor as "Shop Top Housing" units;
- Alterations to the rear besser block building;
- Construction of a carport; and
- Other site works including the installation of water tanks, mailboxes, screening plantings and on site car parking.

To confirm and clarify the terms of consent, the development must be carried out in accordance with the stamped and approved plans drawn by Precise Designs dated 10/01/2020 (as amended in red) and accompanying documentation, unless modified by any conditions of consent. Any deviation will require the consent of Council.

2. The applicant must comply with all relevant prescribed conditions as contained in Division 8A of the *Environmental Planning & Assessment Regulation 2000* (as detailed at the end of this consent).

3. To satisfy the approved use of "Shop Top Housing" residential units, at least one ground floor premises must remain as a "retail premises" or "business premises" in perpetuity as defined under the *Inverell Local Environmental Plan 2012* and the *Standard Instrument*
4. Prior to the occupation of either of the ground floor "business premises" (shop space 1 & 2) separate Development Consent ("First Use" Development Application) must be obtained for the use.
5. Any future applications to change the use of the lower floor premises will be subject to Development Consent. This will include an assessment of carparking, water and sewer calculations based on the new use. Any additional charges will be conditioned in an approval and payable in accordance with Council's fee structures at the time of application and payment.
6. Should the besser block building be found not to be suitable for alteration as approved under this consent separate Development Consent is to be obtained from Council to demolish and/or reconstruct the building.
7. The development must have the following street addresses and correspond with the approved plan:
 - Medical Centre (Ground floor tenancy 3) – 143 Byron Street;
 - Ground floor "shop space 2" – 145 Byron Street;
 - Ground floor "shop space 1" – 147 Byron Street
 - Shop Top Housing unit A – 110 Byron Lane;
 - Shop Top Housing unit B – 112 Byron Lane; and
 - Shop Top Housing unit C – 114 Byron Lane.
8. The six (6) concrete wheel stops in the on-street parking spaces fronting the site within Byron Street will be removed by Council as the development proceeds (at Council's expense). The wheel stops will not be reinstated.
9. In addition to the proposed historic plaque on the front façade of the new building a heritage interpretation panel that provides a brief history of the site and includes early images of the building with its distinctive and different sized semi-circular facades over the years must also be provided. The panel must also reference any salvaged timbers used on the façade cladding. The panel is to be designed in consultation with and approved by Council prior to issue of an Occupation Certificate.
10. The block perimeter wall of the upper level must not be extended forward towards Byron Street on order to comply with any BCA fire requirements. This is to ensure that the streetscape is not adversely impacted.
11. If a construction has not commenced within six (6) months of the date of this consent the site must be screened and secured in a manner approved by Council (for example, a 2m high marine ply wall structure along the Byron Street boundary).

Prior to Demolition

12. Prior to the commencement of demolition works an archival photographic recording of the site and buildings is to be prepared and submitted to Council for approval. The archival recording must be in accordance with the NSW Heritage Office guidelines titled "Photographic Recordings of Heritage Items using film or Digital Capture". Copies of the photographic archival recording must be provided to Inverell Shire Council and the Inverell Public Library.
13. Prior to demolition approval under Section 138 of the *Roads Act 1993* is to be obtained for all works and temporary fencing and hoarding within the Byron Street and Byron Lane road reserves. A traffic management plan must be submitted with this application.

During Demolition

14. The existing sewer connection is to be located, isolated and capped off prior to commencement of site demolition works to protect the sewer junction and riser.
15. Every attempt must be made to salvage built fabric from the "Timber Arch Shops" building for reuse on and in the new building.
16. A temporary hoarding or temporary construction site fence must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of works.
17. The removal of any asbestos must be undertaken in accordance with the requirements of WorkCover, the *Work Health and Safety Regulation 2011* and the *Protection of the Environment Operations (Waste) Regulation 1996*.
18. All asbestos waste must be stored, transported and disposed of in accordance with the *Protection of the Environment Operations (Waste) Regulation 1996*.
19. All demolition work is to be carried out in accordance with *Australian Standard 2601 The demolition of structures*.
20. At all times during demolition a competent person shall directly supervise work. It is the responsibility of the person to ensure that:
 - The structure to be demolished and all its components shall be maintained in a stable and safe condition at all stages of the demolition work;
 - Precautions are to be taken to ensure that the stability of all parts of the structure and the safety of persons on and outside the site are maintained particularly in the event of sudden and severe weather changes; and
 - The site shall be sealed off at all times against the unauthorised entry of persons or vehicles.
21. All utilities are to be disconnected from the site and capped to the satisfaction of the relevant authority.

Prior to issue of a Construction Certificate

22. Prior to the commencement of any works (including earthworks not associated with demolition) on the site a Construction Certificate must be issued in accordance with Section 109C (1)(b) and 81A (2) of the *Environmental Planning and Assessment Act 1979*. The application for a Construction Certificate shall include plans and specifications demonstrating full compliance with the *Building Code of Australia* and associated standards.
23. Prior to issue of a Construction Certificate, approval is to be obtained under the *Local Government Act 1993* for:
 - The disposal of liquid trade waste to Council's sewer;
 - Storm water drainage works;
 - Water supply work; and
 - Sewerage work.
24. Prior to issue of a Construction Certificate, detailed engineering plans are to be submitted to and approved by Council for the awning over the Byron Street footpath. The design must:
 - Physically locate all underground assets and services and show on plan;
 - Locate the support posts a minimum 1m behind the kerb;
 - Ensure support post footings extend at least 500mm below all services and to be at least 200mm clear of all services (including conduits) in plan view; and
 - Ensure support post concrete footings are boxed to a depth of 200mm below the lowest service/conduit, and the void between the poured footing and

services/conduits backfilled with compacted granular non cohesive material.

25. Prior to issue of a Construction Certificate, a building hydraulic design is to be prepared by a suitably qualified hydraulic designer. This design must be in accordance with *Australian Standard 3500.1 Plumbing Drainage & Water Services* and include at least hydrant capabilities for fire fighting and design as per Section 4 Cross – Connection Control & Backflow Prevention, to manage potential backflow prevention associated with the proposed medical practice.
26. Prior to issue of a Construction Certificate, detailed engineering plans are to be submitted to and approved by Council for the access crossing, bin storage area and internal car parking area. These plans are to clearly demonstrate:
 - The Byron Lane layback location with a minimum width of 6m;
 - Concrete pavement design;
 - Aisle widths and car parks dimensions in compliance with Australian Standard 2890.1 Off Street Parking Facilities; and
 - The bin storage area can accommodate adequate manoeuvring area for a collection vehicle or there is provision for bins from the site to be placed for kerb side collection behind the kerb, not in the gutter or access crossing obstructing traffic.
27. Prior to the issue of a Construction Certificate, contributions/fees must be paid to Council for water supply and water connections. This will require payment to Council of:
 - A single Contribution under Council's Development Servicing Plan No. 1 for 0.10 equivalent tenement; and
 - A single water connection fee to upgrade the connection size in accordance with Council's fees and charges.

28. Prior to the issue of a Construction Certificate, contributions/fees must be paid to Council for sewer supply and sewer connections. This will require payment to Council of a single Contribution under Council's Development Servicing Plan No. 1 for 1.77 equivalent tenement.

The existing sewer junction is to be used for the development fitted with a reflux valve to prevent backflow in a flood event.

29. In accordance with the *Inverell Development Control Plan 2013*, the development has a deficit of 7 car parking spaces. Prior to the issue of a Construction Certificate, a car parking contribution of \$21,245.00 (i.e. \$3,035 x 7 spaces) is to be paid to Council pursuant to Section 7.11 (previously s.94) of the *Environmental Planning and Assessment Act 1979*.
30. Prior to the issue of a Construction Certificate, a dilapidation report is to be prepared by a practicing structural engineer at full cost to the proponent. It must detail the structural adequacy of adjoining properties, including Council's property, and their ability to withstand the proposed excavation. Any damage not shown in the dilapidation report submitted to Council before site works commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the proponent's expense.

During Construction

31. Timber salvaged from the demolition of the "Timber Arch Shops" must be reused on the front façade of the buildings as per the approved plan.
32. The development must be contained wholly within the site, including the access ramp and steps. A report by a registered surveyor is required to certify that the footings of the building do not extend into the Byron Street road reserve. This report is to be submitted to Council prior to pouring the footings.
33. To safeguard the local amenity, reduce noise nuisance and to prevent environmental pollution during the construction period:

- Works on site are to be carried out in accordance with the *Protection of the Environment Operations Act 1997* in relation to noise, dust and associated nuisances from the site. The carrying out of works shall not interfere with the quiet enjoyment of the surrounding neighbourhood;
 - Construction may only be carried out between 7.00am and 5.00pm, Monday to Saturday, and no construction is to be carried out at any time on a Sunday or Public Holiday. Council may consent to vary these hours in particular circumstances where it can be demonstrated that it is unavoidable;
 - Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage path of easement, natural watercourse, footpath, kerb or road surface and shall implement measures to prevent the movement of such material off site;
 - Building operations such as brick cutting, washing tools, concreting and bricklaying shall be undertaken on the building block. The pollutants from these building operations shall be contained on site;
 - Builders waste must not be burnt or buried on site. All waste (including felled trees) must be contained and removed to a waste disposal depot;
 - Sediment and erosion control measures are to be implemented onsite and maintained until the site is fully stabilised, in accordance with Council's Erosion and Sedimentation Control Policy 2004; and
 - Where the proposed development involves the disturbance of any existing survey monuments, those monuments affected will need to be relocated by a registered surveyor under the *Surveying and Spatial Information Act 2002*. A plan showing the relocated monuments will then be required to be lodged as a matter of public record at the Lands Titles Office.
34. The existing kerb layback in Byron Street is to be removed and capped by the applicant under Council's supervision, at the applicant's expense.
35. The full width of concrete footpath fronting the site must be reconstructed and paved by the applicant to match the paving both sides of the development. Council can provide a quotation to undertake this work. The footpath must have the same profile as the adjoining footpath.
36. If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of this consent, must at their own expense:
- Protect and support the adjoining premises from possible damage from the excavation, and
 - Where necessary, underpin the adjoining premises to prevent any such damage.
37. All work must be carried out in accordance with the requirements of the Building Code of Australia.
38. For the duration of any work on site, the builder must maintain a copy of the specification, stamped approved plans, copy of development consent and construction certificate on site.
39. Any new electrical wiring is to be located one (1) metre above the 1991 flood level or be designed for continuous submergence in water.
40. To the maximum extent possible, all heating and cooling systems are to be located one (1) metre above the 1991 flood level.
41. All sewer connections to the building(s) are to be fitted with reflux valves to prevent backflow of sewage in a flood event.
42. All precautions must be taken to prevent any damage likely to be sustained to any nearby properties. Adjacent owner's property rights must be observed at all times. Should any damage occur to a nearby property as a result of the development, all necessary repairs or suitable agreement for the necessary repairs are to be completed by the applicant in

consultation with and with the consent of the affected property owner.

43. The applicant shall bear the cost of all restoration works to any Council property damaged during the course of construction. The applicant shall advise Council, in writing, of any nearby existing damage to Council property before commencement of development. Failure to adequately identify existing damage will result in the damage detected by Council after completion of the construction being repaired at the applicant's expense.
44. A report by a registered surveyor is required to certify that the floor level of the building is at the required 584.80m AHD level. This report is to be submitted to Council prior to the work proceeding past floor level.
45. Roof mounted air conditioning units, solar hot water systems, satellite dishes and the like must not be visible from the Byron Street public domain.

Prior to Occupation

46. Prior to occupation of the premises, an Occupation Certificate must be issued in accordance with Section 109M of the *Environmental Planning and Assessment Act 1979*.

Note: Prior to issue of the Occupation Certificate, the Principal Certifying Authority is required to be satisfied, amongst other things, that:

- all required inspections (including each applicable mandatory critical stage inspection) have been carried out; and
 - any preconditions to the issue of the certificate required by a development consent have been met.
47. Prior to issue of an Occupation Certificate, where applicable, the following works are to be completed:
 - All adjacent public and private land must be cleared of obstructions such as stockpiles of topsoil, building material, waste and other material associated with construction.
 - The applicant will repair/restore, or pay the full costs associated with repairing/restoring, any footpath, public reserve and infrastructure that is damaged by the development.
 - Any unused layback in the kerb and gutter is to be capped to Council's satisfaction.
 - Sediment and erosion control measures, which are no longer required, are to be removed including any silt/sediment in gutters and/or drains.
 48. Prior to the issue of an Occupation Certificate the car parking and access crossings is to be completed in accordance with the approved engineering plans, at the applicant's expense.
 49. Prior to issue of an Occupation Certificate, the approved plaque and Heritage Interpretation Panel must be installed.
 50. Prior to issue of Occupation Certificate, a Flood Emergency Plan for the premises must be submitted to, and approved, by Council
 51. Prior to issue of an Occupation Certificate, the owner of the building shall furnish to the Principal Certifying Authority a final/interim Fire Safety Certificate with respect to each essential fire safety measure for the building to which the Certificate relates. The Certificate shall state that each essential fire safety measure has been assessed by a properly qualified person and that each essential fire safety measure was found, when it was assessed, to be capable of performing to the required standard.
 52. Prior to the issue of an Occupation Certificate, all stormwater is to be completed in accordance with the approved engineering plans, Section 68 approval and *Australian Standard 3500.3 Plumbing and drainage*.

53. Prior to the issue of an Occupation Certificate, trade waste measures are to be completed in accordance with the Section 68 approval.
54. Prior to the issue of an Occupation Certificate, the carpark must be paved in the surface treatment approved, line marked showing designated parking spaces (including disabled and shared space) and have the turning bay delineated and surface hatched out to avoid parking in the bay.
55. Prior to the issue of an Occupation Certificate, road signage must be installed for Byron Lane at the applicants expense. This is to ensure emergency services can easily locate the access for the "shop top housing" units from Byron Lane.

Ongoing use

56. No parapet, awning fascia or building façade signage is to be installed on the premises.
57. Window decal signs or applications cannot exceed 50% of the windows to ensure active street frontages and passive surveillance can be achieved from the lower floor tenancies.
58. Each lower floor tenancy must have a flood emergency plan in place.
59. The hours of operation for the Medical Centre are limited to Monday to Friday, 8am to 6pm.
60. All loading, unloading and storage of goods must be carried out within the confines of the property.
61. All vehicles must enter and leave the site in a forward direction.
62. At no time may any goods for sale, display or storage be placed on the public road, public footpath, service land, parking area and driveways, public or private pedestrian walkways, or outside the site without the prior consent of Council.
63. The noise level emanating from any air-conditioning systems must not exceed the background level by more than 5dB(a) when measured at the worst affected property not associated with the development.
64. All car parking and vehicle movement areas are to be maintained in perpetuity in a reasonable manner.
65. The owner of the building must certify to Inverell Shire Council every year that the essential fire safety measures installed in the building have been inspected and are capable of operating to the required minimum standard.
66. Separate approval must be obtained from Council prior to the installation of any advertising signs, other than signs which may be installed as 'Exempt Development' in accordance with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 or Schedule 2 of the Inverell Local Environmental Plan 2012.
67. All new external lighting must:
 - comply with *AS 4282-1997 Control of the obtrusive effects of outdoor lighting*, and
 - be mounted, screened and directed in a way that it does not create a nuisance or light spill on to buildings on adjoining lots or public places.
68. The owner must maintain Public Risk Insurance in relation to the awning being over the road reserve. The policy is to note Council as an interested party.

Reasons for Conditions:

The above conditions have been imposed:

1. To ensure compliance with the terms of the applicable environmental planning instruments.
2. Having regard to Council's duties of consideration under Section 79C of the *Environmental Planning and Assessment Act 1979*, as well as Section 80A which authorizes the imposing of the consent conditions.
3. Having regard to the circumstances of the case and the public interest.

Reasons for Approval

1. The development, subject to conditions, is consistent with the objectives of the B2 Local Centre zone.
2. On balance, it is considered that the benefit of retaining the heritage item is not greater than the broader benefits of providing an accessible, sympathetic, modern and well integrated mixed use development in this location.
3. The uses, built form and design of the development, subject to conditions are consistent with the streetscape and other buildings and uses in the locality.
4. In accordance with the *Inverell Development Control Plan 2013*, the development has a deficit of 7 car parking spaces. These are not achievable onsite so a car parking contribution is to be paid to Council pursuant to Section 94 of the *Environmental Planning and Assessment Act 1979* and in accordance with this plan.
5. Flood certification has been submitted by an engineer and the building complies with the necessary flood requirements.
6. In consideration of heritage conservation area controls of the *Inverell Development Control Plan 2013*, the new building is considered appropriate in its style, scale and finishes.

Community Consultation

Neighbour notification and advertising was undertaken in accordance with the *Inverell Development Control Plan 2013*. One submission was received requesting all efforts be made to incorporate the heritage significance of the site in the new development. This was done by both the applicant in their development proposal and Council's assessment report and conditions of consent.

If you are dissatisfied with this decision section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.

You are also advised that section 82A of the *Environmental Planning and Assessment Act 1979* provides that you may apply to Council for a review of this decision subject to the limitations contained in that section and payment of the prescribed fee.

On behalf of Inverell Shire Council


ANTHONY ALLISTON
MANAGER DEVELOPMENT SERVICES
DATE : 20 January 2020

Annexure

Prescribed Conditions Summary

As per condition 2 of this consent, the following matters prescribed under Division 8A of the *Environmental Planning & Assessment Regulation 2000* must be complied with, where relevant:

1. All work must be carried out in accordance with the requirements of the *Building Code of Australia*.
2. In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
3. Prior to commencement of building work, subdivision work or demolition work a sign must be erected in a prominent position on the site. The sign must:
 - show the name, address and telephone number of the principal certifying authority for the work;
 - show 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
 - state that unauthorised entry to the work site is prohibited.

The sign is to be maintained while the work is being carried out, but must be removed when the work has been completed.

4. Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - in the case of work for which a principal contractor is required to be appointed:
 - the name and licence number of the principal contractor; and
 - the name of the insurer by which the work is insured under Part 6 of that Act; and
 - in the case of work to be done by an owner-builder:
 - the name of the owner-builder; and
 - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified as required above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

5. If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of this consent, must at the person's own expense:
 - protect and support the building, structure or work from possible damage from the excavation; and
 - where necessary, underpin the building, structure or work to prevent any such damage.