

Planning Assessment Report

Application to modify consent DA 09-124 under s96 (2) of the *Environmental Planning and Assessment Act 1979*

1. APPLICATION

The application seeks to modify consent DA 09-124 under s96(2) of the *Environmental Planning and Assessment Act 1979*: proposal seeks consent to modify Condition 1, 2 and 12 to allow development of new sheds, sign and extension of permitted operating hours to include Sunday 7am-6pm.

2. ASSESSMENT

Section 96 (2) of the *Environmental Planning and Assessment Act 1979*

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 the consent if:

(a) 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).

The proposed development is substantially the same as approved.

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

No referral required.

(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.

The application was notified in accordance with DCP No. 9- adjoining owners were notified.

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

Two submissions were received, both objecting to the application specifically, the extension of permitted operating hours. The grounds for objection were:

- Currently aware of noise from sawmill.
- The consultants provide no evidence that the recommendations presented to minimise noise impacts will be effective.
- Believe application contradicts the provisions of DCP No. 2 that rural industries should not create a noise nuisance.

(3) 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 79C (1) as are of relevance to the development the subject of the application.

Section 79C assessment provided below.

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

Noted.

Section 79C Evaluation- Environmental Planning and Assessment Act 1979

(1) *Matters for consideration—general*

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) *the provisions of:*

(i) *any environmental planning instrument, and*

IDO- proposal consistent with provisions of 7(e).

(ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved),*

Draft LEP 2012- consistent with the Objectives of the Zone IN1 General Industry, except 'to minimise any adverse effect of industry on other land uses'. Proposal to operate Sundays will generate noise impacts on residential uses nearby. The Noise Impact Assessment has not been conducted in accordance with the requirements of the NSW Industrial Noise Policy. The application has not demonstrated that the proposal to operate Sundays will not generate noise impacts.

(iii) *any development control plan, and*

DCP No. 6 Outdoor Advertising

Proposed sign is too large at 8m x 3m and will create significant visual impact consistent with a roadside advertising billboard. The purpose of the sign is for business identification and does not need to be this large to serve this purpose. Schedule 1 of the DCP makes provisions for a pole or pylon sign to be a maximum 8m² in area- the proposal plans have been amended in red to achieve this requirement.

DCP No. 2 Development in Rural Areas

2.0 Objectives

Visual amenity- Proposed 8mx3m sign will create significant visual impact. Plans amended in red to require sign that meets the maximum allowed under DCP. No. 6; being, 8m².

Reduce potential for conflict between different land uses- Sunday operations have potential to create noise impacts on the amenity of surrounding residential dwellings. Full rationale provided below.

Section 7.0 Rural industries

7.1 (a) Rural industries do not create a noise nuisance.

Not compliant- The Noise Impact Assessment submitted in support of the application has not been carried out in accordance with the provisions of the NSW Industrial Noise Policy:

- Establishment of background noise levels- noise monitoring undertaken over Mon-Sunday, should have been Sunday only as this is the time of proposed operations as per NSW INP; s. 3.1.2).
- Expected noise levels over ambient noise levels- noise monitoring occurring on Sunday when Hurfords were operating (NIA Report, pg. 16). This is not in accordance with s 3.1 of the NSW INP.

Council is concerned that Sunday operations will result in 'intrusive noise' as over 5dba over background. Furthermore, the proposed measures suggested in the report to mitigate noise impacts are not described or specified in detail and no evidence is provided for their effectiveness. Additionally, one of the measures proposed is to keep the eastern facing shed doors closed during operational hours which will reduce air circulation and may impact on worker comfort in warmer times of the year.

7.2 Complies- Adequate detail provided as part of application.

7.3 Not applicable- Car parking not relevant to assessment.

7.4 Not compliant- Sunday operations likely to impact on residential land use.

(iia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

Not applicable.

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,

Not applicable.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

Sheds- no adverse impacts.

Sign- visual impact as proposed. Plans amended in red to achieve compliance with DCP No. 6 and reduce visual impact.

Extended operational hours- The application has not provided evidence that noise impacts will not occur. The Noise Impact Assessment submitted in support of the application has not been carried out in accordance with the provisions of the NSW Industrial Noise Policy:

- Establishment of background noise levels- noise monitoring undertaken over Mon-Sunday, should have been Sunday only as this is the time of proposed operations as per NSW INP; s. 3.1.2).
- Expected noise levels over ambient noise levels- noise monitoring occurring on Sunday when Hurfords were operating (NIA Report, pg. 16). This is not in accordance with s 3.1 of the NSW INP.

Council is concerned that Sunday operations will result in 'intrusive noise' as over 5dba over background. The proposed measures suggested in the report to mitigate noise impacts are not described or specified in detail and no evidence is provided for their effectiveness. Additionally, one of the measures proposed is to keep the eastern facing shed doors closed during operational hours which will reduce air circulation and may impact on worker comfort in warmer times of the year.

(c) the suitability of the site for the development,

Suitable for development of shed and sign (smaller than proposed) but not for Sunday operations due to impacts on neighbouring and nearby residences.

(d) any submissions made in accordance with this Act or the regulations,

See S96 assessment above.

(e) the public interest.

Noise impacts on a Sunday are not deemed to be in the public interest. At least one day of the week should be preserved for residents to be free of industrial noise.

Significant area of adjoining the site has been zoned IN1 General Industry. Therefore, likely to be increased industrial activities in the area in future. Setting a precedent for industrial activities to occur on Sundays may mean Council is obligated to approve more Sunday operations in future, potentially leading to greater noise impacts on Sundays.

3. DETERMINATION

1. The application has been assessed against the relevant provisions in accordance with Section 96(2) of the *Environmental Planning and Assessment Act 1979*.
2. The following parts of the application have been found to comply with the relevant provisions and are to be approved:
 - Sign (as shown on plan no. A02 Plan and Elevations, AS AMENDED IN RED).
 - Two new sheds
3. The following parts of the application have been found not to comply with the relevant provisions and are to be refused:
 - Extension of operating hours to permit Sunday operation.

4. The development consent issued 18 May 2009 is to be modified in the following manner:

Condition 1 to be amended to read:

The development shall be carried out and maintained in accordance with the following plans, except where otherwise provided by the conditions of this consent:

Plan Title	Revision No.	Plan number	Date
Overall Site Layout		A01	24 May 2012 (received)
Plan and Elevations (as amended in red)		A02	24 May 2012 (received)
Plan and Elevations Shed 3		A03	24 May 2012 (received)
Sketch Shed 2		SK2	24 May 2012 (received)
Fire Truck Access to Proposed Sheds		06439_GR-AUG12	24 May 2012 (received)

Modify Condition 2 to read:

The applicant being informed that this approval shall be regarded as being otherwise in accordance with the information and particulars set out and described in the development application registered in Council's records as Development Application No. 09-124 on March 2009 and as modified by this consent. Any alteration, variation or extension to the use for which approval has been given would require further development consent.

Modify Condition 3 to read to provide a 5 year consent period.

Modify Condition 51 to read:

'The buildings must be clad in low-reflective material'.

Lachlan Black
A/Director Planning and Environmental Services

Dated