

MODIFICATION OF CONSENT REPORT - DA85/90 (Section 96 026/14) – McDonald’s Restaurant & Drive Through Facility with Associated Advertising Signs - Lot 1 DP 808332 – Great Western Highway Lithgow NSW 2790

1. PROPOSAL

Council is in receipt of a modification to development consent (DA 85/90) which seeks to amend the hours of operation for the McDonald’s Restaurant and Drive Through on Lot 1 DP 808332, Great Western Highway Lithgow.

The applicant proposes to extend the trading hours of the dining area between 2.00 am and 6.00 am so that it becomes operational for 24hrs, 7 days a week.

The original consent (DA 85/90) was approved with the hours of operation for the dining area being restricted to be between 6am to 2am 7 days. A modification was approved in 2008 for the drive through facility to become operational 24hrs 7 days a week. The additional hours were approved based on the perceived demand for drive through services as the site is located on a major transport route (corner of the Great Western Highway and Main Street).

The application for the McDonald’s restaurant and drive through facility with associated advertising signs (DA 85/90) was originally approved by the Traffic Control Committee and the Planning and Development Committee on the 9 August 1990.

The most recent modification was approved under delegation on the 30 May 2008 which approved the 24hr drive through facility. The drive through area is shown in the photo below:



The application will be assessed under Section 96 1(A) of the *Environmental Planning and Assessment Act 1979*.

2. SUMMARY

To assess and recommend determination of Section 96 Modification of Consent No. S96026/14 of DA85/90. The recommendation is for approval subject to conditions.

3. LOCATION OF THE PROPOSAL

Legal Description : Lot 1 DP 808332
Property Address : GREAT WESTERN HIGHWAY LITHGOW NSW 2790

4. DETAILS OF CURRENT APPROVAL

The application for the McDonald's restaurant and drive through facility with associated advertising signs was originally approved by the Traffic Control Committee and the Planning and Development Committee on the 9 August 1990.

The most recent modification was approved under delegation on the 30 May 2008 which approved the 24hr drive through.

5. PERMISSIBILITY: The development was originally assessed under the Interim Development Order No. 1 – City of Greater Lithgow, residential 2(c) zone which indicated that a refreshment room is permissible with Council consent.

The previous modification was assessed under Clause 9 of Council's current LEP 1994 which indicates that refreshment rooms are permissible in zone 3 Business. This permissibility is not proposed to change as part of this modification.

It is considered that the proposal is consistent with the aims and objectives of the Business zone.

5.1 POLICY IMPLICATIONS (OTHER THAN DCP's)

As the original application was approved by the Planning and Development Committee, the modification is required to be determined at a Council meeting.

5.2 FINANCIAL IMPLICATIONS (eg Section 94)

No Section 94 Contributions were applicable to the original application nor are they applicable to the modification, as the modification only relates to the extension of operating hours.

5.3 LEGAL IMPLICATIONS

5.3.2 Environmental Planning and Assessment Act 1979- Section 96 (1A)

(1A) Modifications involving minimal environmental impact

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 proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (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
- (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.

Subsections (1), (2) and (5) do not apply to such a modification.

Comment: Council is satisfied that the modification, is of a minimal environmental impact. The modification is similar to what was approved previously, as it solely relates to the extension of operating hours for the dining area.

Given that the proposed amendment is for the extension of operating hours for the dining area, the modification was referred to the Traffic Advisory Local Committee and the Lithgow Police. The application was also notified to adjoining neighbours and placed on public display at Council’s Administration Building for a period of 14 days.

During the notification period, two submissions were received. These submissions are outlined further in this report.

Any Environmental Planning Instruments

Interim Development Order No. 1 – City of Greater Lithgow

The development was originally assessed under Interim Development Order No. 1 – City of Greater Lithgow, residential 2(c) zone which indicated that a refreshment room was permissible with Council consent.

Lithgow City Local Environmental Plan 1994

The previous modification was assessed in accordance with the provisions of Lithgow’s Local Environmental Plan 1994 and was found to be compliant. The modification does not require any further assessment under the LEP.

State Environmental Planning Policies

No SEPP’S were assessed for the original application or for the previous modification. No SEPP’s are applicable to the modification.

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

Lithgow City Council’s Draft Local Environmental Plan 2013

Council’s Draft LEP 2013 – Compliance Check	
Clause	Compliance
Part 2 B4 Mixed Uses	Yes

Comment: The development is an established restaurant and has existed on the property for many years.

The property is located on the corner of the Great Western Highway and Main Street; it is surrounded by similar uses such as Red Rooster which is located directly adjacent to the site.

The original development is permissible in the zone under Council's Draft LEP 2013 and the modification does not change that permissibility.

Any Development Control Plan

The original application was assessed in accordance with the provisions of the relevant DCP's and was found to be compliant. The modification does not require any further assessment under any DCP as signage and carparking exists on the site with no changes proposed or required.

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?

None.

Any matters prescribed by the regulations that apply to the land

The original application was assessed in accordance with the provisions of the Regulations and was found to be compliant. The modification does not require an assessment under the Regulations.

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

Access, parking, site layout, internal design, services, landscaping, and signage were all assessed as part of the original application and would not be affected by the modification.

Safety and Security: The previous modification for 24 hour trading for the drive through states:

- *The restaurant has a frontage to the Great Western Highway and Main Street, two major roadways, increasing opportunities for passive surveillance.*
- *The car park area is well lit and does not present an area for loitering or concealment of undesirable activities.*
- *Security measures are currently in operation at the site, including time delay locks, closed circuit television monitoring the McDonald's store, car park and drive-through areas.*
- *Security Patrols will be used as required to discourage loitering.*

The development was referred to the Lithgow Police (TALC member) who did not make any comment to the safety and security for the extension of hours. As such it is assumed that they are satisfied with the applicant's response.

A plan of management was submitted with the modification application and outlines management and action plans for safety and security within the vicinity. The plan of management is considered to be satisfactory for the development.

The site has relatively good passive surveillance from the adjoining road system and security measures within the site (lighting and closed circuit television monitoring). The safety and Security measures for the site are considered to be satisfactory for the development.

Adjoining Landuses: The property is located on the corner of the Great Western Highway and Main Street. Commercial premises adjoin the property with the railway line located at the rear of the site. A business is located on the opposite side of Main Street next to Red Rooster, refer to the photo below:



As this business and the restaurant has been located in the vicinity for a number of years, it is unlikely that the modification would have major impact due to the area being regularly utilised by a large volume of traffic and people throughout all hours of the day and night.

The development was referred to adjoining neighbours. During the notification period two submissions were received. These submissions are outlined further in this report.

Waste Disposal: A number of rubbish bins are located throughout the property, specifically at the driveway exit and around the seating area, inside and outside of the building.

A plan of management was submitted with the application and outlines management and action plans for waste disposal within the vicinity including waste located on adjoining properties and streets.

Waste disposal management is considered to be satisfactory for the development.

Noise: The current hours of the restaurant seating area is between 6am and 2am with the drive through facility open 24hrs.

Traffic and social noise is expected to be limited throughout the night due to fewer activities occurring compared to during daylight hours.

Two submissions from adjoining residents raised concerns regarding noise issues. The applicant has provided a response to the noise concerns. This response is detailed further in this report.

Council is satisfied with the applicant's response and considers that noise from the development would be controlled in a satisfactory manner to minimise impacts to adjoining residents.

The Suitability of the site for the development

The original application was assessed in terms of site suitability and was found to be suitable. The modification does not require any further assessment of suitability.

Any submissions made in accordance with this Act or the Regulations

Given that the proposed amendment is for the extension of operating hours for the dining area, the modification was referred to the Traffic Advisory Local Committee and the Lithgow Police. The application was also notified to the adjoining neighbours and placed on public display at Council's Administration Building for a period of 14 days.

The modification is also to be determined by the elected Council.

NEIGHBOUR NOTIFICATION

During the notification period, two submissions were received. The issues outlined are as follows:

1. *Rubbish from the restaurant being found in resident's yards and on the street,*
2. *Traffic noise during busy time periods,*
3. *Employee and customer parking in front of resident's dwellings,*
4. *Action Plan to minimise congregation and noise from participants between the hours of 2am to 6am. This would potentially cause social disturbance to surrounding residents.*

Applicant's Comment:

Rubbish

Section 4.7 of the Plan of Management outlines the Litter Management practices adopted by McDonald's Lithgow.

McDonald's Australia operates a Clean Streets Program at all of its restaurants nationally and as part of this incorporates strict adherence with a Litter Patrol Toolkit which sets out the practices and procedures for litter management and responsibility at each restaurant.

As part of this, McDonald's Lithgow ensures that a Litter Patrol Travel Path is conducted a minimum of twice daily at 6.00am and 4.00pm in addition to the consistent and regular lot checks that occur within the car park itself.

A generous number of bins are located through-out the premises. Litter branding is included on all litter patrol bins and tray mat messages related to litter are communicated in store.

Vandalism and graffiti are removed (where possible) within 24 hours.

The site has litter traps installed in the car park to minimise gross pollutants from entering the stormwater drainage system.

McDonald's participation and major sponsorship of Clean-Up Australia Day contributes to communicating the importance of litter management in the community.

Traffic

A submission raised traffic noise during busy time periods. We confirm that the hours to which this Modification Application relates are not within 'busy' or 'peak' time periods.

Furthermore, McDonald's Lithgow is located at a busy intersection at the corner of Main Street and Great Western Highway and traffic noise generated during busy time periods in the area is as a result of these movements and would occur primarily within daylight hours.

Parking

A submission raised concern with employee and customer parking in front of residential dwellings. We confirm that adequate parking is provided on site for our customers and staff.

Notwithstanding this, it is our understanding that our staff are not parking in front of residential dwellings.

Action Plan

In response to this item, we have prepared and enclosed our Plan of Management for the operation of McDonald's Lithgow. The Plan of Management outlines our practices and procedures for ensuring that McDonald's Lithgow is always operated efficiently and without amenity impact on our surrounding residential neighbours. Please refer specifically to Section 4.6 of the Plan of Management in relation to noise generation in the car park by patrons.

Furthermore, we adopt zero tolerance policies on dealing with customers who congregate in the car park or who exhibit anti-social behaviour. McDonald's has a long history of operating well run premises in Australia and extended operating arrangements are not new to our business. Based on our experience across the country, we have a suite of initiatives which can be used to manage situations including standard deterrent activities such as lighting and CCTV, as well as other proactive customer management initiatives.

We have sound management processes in place as outlined within the Plan of Management for dealing with and addressing incidences of anti-social behaviour which have the potential to result in noise disturbance (should they occur) and therefore the potential for these incidents arising is mitigated significantly and any incidents which do occur are dealt with immediately and effectively.

Council Comment: Council is satisfied with the applicant's response to the submissions received for the development and that no further discussion is required to be undertaken on these matters.

TRAFFIC ADVISORY LOCAL COMMITTEE (TALC)

The Traffic Advisory Local Committee had no objection to the proposed modification for the hours of operation to be 24hrs for the dining area of the restaurant.

LITHGOW POLICE

Lithgow Police (who also sits on the Traffic Advisory Committee) made the following comments in relation to the development application:

"In regards to the two letters from the public, I don't see the issue is during the extended trading hours. The peak periods around McDonald's are of a constant, being Saturday and Sunday, morning and afternoon travel times and Public Holiday periods and to a lesser extent weekday Morning, Midday and Afternoon.

No issues from the police, extension to trading to continue.”

The public interest

The original application was assessed in terms of the public interest. The proposed modification does not change whether the development is within the public interest.

6. DISCUSSION AND CONCLUSIONS

The application has been thoroughly assessed under Section 96 1(A) of the *Environmental Planning and Assessment Act 1979* and is appropriate for recommendation of approval subject to conditions.

7. ATTACHMENTS

Schedule A- Conditions of consent.

8. RECOMMENDATION

THAT the Section 96 Modification of Consent application S96 026/14 associated with DA 85/90 is approved with condition 1 being modified to read as:

- 1. That the development be carried out in accordance with the application, the Statement of Environmental Effects, accompanying information, plans numbered A90-16 662, DAI, 2A-7,SWI prepared by Nettleton Tribe Partnership dated June 1990, the Modification of Consent (S96 026/14) and accompanying information, and any further information provided during the process unless otherwise amended by the following conditions.**

Report prepared by: Lauren Stevens

Group Manager Environment and Development: Andrew Muir

Signed:.....

Signed:.....

Dated:.....

Dated:.....

REASONS FOR CONDITIONS

The conditions in Attachment 1 have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To ensure that adequate road and drainage works are provided.
- To ensure that satisfactory arrangements are made to satisfy the increased demand for public recreation facilities
- To ensure access, parking and loading arrangements will be made to satisfy the demands created by the development.
- To ensure the structural integrity of the development.
- To ensure the protection of the health and safety of the occupants of the development.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts.
- To ensure lots are adequately serviced.
- To ensure there is no unacceptable impact on the water quality.
- To ensure adequate soil conservation and protect against movement of soil and sediments.

Schedule A

Conditions of Consent (Consent Authority)

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

You are to note that the conditions that have been modified and additional conditions are highlighted in bold.

ADMINISTRATIVE CONDITIONS

1. **That the development be carried out in accordance with the application, the Statement of Environmental Effects, accompanying information, plans numbered A90-16 662, DAI, 2A-7, SWI prepared by Nettleton Tribe Partnership dated June 1990, the Modification of Consent (S96 026/14) and accompanying information, and any further information provided during the process unless otherwise amended by the following conditions. - Amended as per Modification (S96 026/14)**
2. Submission of revised landscaping plan integrating a selection of 2 to 5 metre high trees within the proposed landscaping design. Revised plan to show all landscaping including the type of species to be utilised, height at maturity and numbers and location of each species.
3. Revised landscaping plan to be submitted and approved by Council prior to construction.
4. The applicant to be responsible for ensuring that all landscaping is maintained in accordance with the approved landscape plan for a period of twelve (12) months from the date of final inspection and approval.

Replacement of damaged, dead or diseased plantings will be required in accordance with the approved landscaping plan.
5. Provision of a metered water supply to the subject site at the owner's cost.
6. Connection to Council's reticulated sewerage system.
7. All stormwater drainage to be disposed of to the satisfaction of the Manager Engineering Services.
8. All driveway, open parking, vehicle turning and paved areas to be either bitumen, concrete or other hard, all-weather paving surface material as approved by the Manager Environmental Services.
9.
 - a) Provision and delineation of a minimum of 56 car parking spaces.
 - b) Provision and delineation of two recreation vehicle parking spaces.
10. All car parking spaces to be constructed in accordance with the standards of Council's Off Street Parking Code.
11. That provision be made for lane line marking adjacent to proposed access, incorporating "Left Turn" painted arrows on the pavement.
12. That the existing bus stop, incorporating bus shelter, on the northern side of Main Street, be relocated to the east of the proposed development.
13. That the existing bus stop on the southern side of Main Street be locate to Musket Parade.

14. That "No Stopping" zones be implemented as follows"
 - (i) From the intersection of Caroline Avenue and the Great Western Highway north to the existing bus zone on the Highway (westbound carriageway).
 - (ii) From the north-western corner of the proposed development south along the Great Western Highway to the intersection with Main Street.
 - (iii) From the south-western corner of the proposed development east to proposed relocated bus zone.
 - (iv) From the south-eastern side of intersection east along Main Street to opposite approximate position of proposed bus zone.
15. That provision be made for the location of "Keep Left" signs on exit medians.
16. That all disused laybacks be removed and replaced by concrete kerb and gutter.
17. That the proposed median in Main Street, west of proposed access, be widened to accommodate a pedestrian refuge.
18. That a weldmesh fence approximately 1 metre in height be erected along the central highway median from the intersection with Main Street to the western side of the existing B.P Service Station access.
19. That all litter bins be fully contained within subject development.
20. That speed hump restrictions be installed within subject development.
21. That two parking bays be reserved as "Waiting Area" for delayed takeaway orders.
22. All building setbacks from the Great Western Highway and Main Street to be in accordance with Clause 48(3) of Interim Development Order No. 1, City of Greater Lithgow.
23. Lots 2, 3 and 4 DP 11241, Parish Marrangaroo, County Cook to be consolidated. Such plan of consolidation to be approved by Council and lodged with the Land Titles Office prior to any construction work commencing.
24. Licensing of all advertising signs in accordance with Ordinance 55.
25. Occupation of the site and building shall not occur until all conditions of development consent and building approval have been complied with to the satisfaction of Council, and formal advice of Council's satisfaction is received by the applicant.
26. No work shall be commenced that is at variance with this consent unless prior approval of the proposed variation has been received by the applicant.
27. That the applicant is to submit a review for Council assessment, 12 months after the commencement of 24 hour trading. This review is to detail whether any complaints or submissions were received by McDonalds or Council in regards to the 24 hour operation, and is to detail any measures undertaken to rectify any relevant issues raised. Upon the submission to the review Council will assess and recommend ameliorative measures if necessary.