

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA21/0410
Proposed development:	Modification to DA10/1209.06 - Condition 28 to Allow Permanent 24/7 Operation for the Drive-thru Facility and Associated Kitchen
Property address:	1 - 21 Cranebrook Road, CRANEBROOK NSW 2749
Property description:	Lot 3 DP 215949
Date received:	11 June 2021
Assessing officer	Jake Bentley
Zoning:	RU4 Primary Production Small Lots - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of modification application to allow permanent 24/7 use of the drive thru, kitchen and preparation areas of the McDonalds restaurant at 1-21 Cranebrook Road, Cranebrook. The modified proposal is benefited by existing use rights as discussed within this report.

In accordance with Council's Community Engagement Strategy 2019 the modification application was notified to the broader surrounding properties with an exhibition date between 28 June and 12 July, 2021. A total of 3 submissions (1 submission has been amended) were received in response.

The modified proposal was referred to the New South Wales (NSW) Police which responded on the 25 August, 2021 raising no comments or objections.

An assessment under Section 4.15 and 4.55 of the Environmental Planning and Assessment Act 1979 has been undertaken and the modification application is recommended for approval subject to recommended condition amendments and additions.

Site & Surrounds

The site is an irregular 3.63 hectare corner allotment on the corner of the round about confluence between The Northern Road, Cranebrook Road and Londonderry Road. The site has an east to west slope, is entirely bushfire prone and is burdened by scenic and landscape values. The northern and western portions of the site are vacant with the exception of a dam within the sites south-western corner.

The south-eastern corner of the site is occupied by a service station centre, storeroom, car service centre, and a food and drink premises (McDonalds) with a drive thru component. It is noted that a residential tenancy exists above the service station. The complex is benefited by vehicle access from both Cranebrook Road and Londonderry Road. The McDonalds restaurant is located on the eastern side of the complex with the drive thru component along the northern side.

The surrounding properties are also zoned RU4 Primary Production Small Lots under Penrith Local Environmental Plan 2010 (PLEP) and are occupied by rural residential land uses. It is noted that the adjacent southern property is also used for plant agriculture.

The site benefits from numerous historical consents for the current land uses on-site being service station, car repair station and food and drink premises. It is noted that the site benefits from a more recent approval (as modified) for redevelopment works associated with the service station, car service centre, dwelling and food and drink premises (as currently on-site);

DA10/1209 - demolition of existing structures and construction of service station (as modified);

DA10/1209.01 - internal modifications to accommodate ancillary managers dwelling above service station and fast food/convenience centre,

DA10/1209.02 - further modifications,

DA10/1209.03 - inclusion of drive thru component for McDonalds and 12 month trial period for 24/7 operation of drive thru,

DA10/1209.04 - modifications to the restaurant component including roof, facade treatment, internal layout and signage,

DA10/1209.05 - modification to design of first floor residential tenancy including extension of outdoor terrace, and

DA10/1209.06 - modification to enclose the terrace areas on the first floor to be used as storage areas.

Proposal

The modified proposal seeks to operate the drive thru component including the required kitchen and preparation areas on a permanent 24/7 basis.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

- **Section 4.14 - Bushfire prone land assessment**

The modified proposal relates to hours of operation only. In this regard, there are no changes proposed to the built form, access/egress or distance of bushfire threats to the proposal therefore, there are no adverse bushfire planning impacts envisioned.

- **Section 4.55(1A) - Modifications involving minimal environmental impact**

In accordance with Section 4.55(1A) 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 a 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,

(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.

The proposed modification has been assessed in accordance with the above provisions as follows:

(a) The modified proposal as amended by recommended conditions of consent is of minimal environmental impact.

(b) The modified proposal is substantially the same to that originally approved noting that the trial period for 24/7 drive thru operation (previously approved) is being extended.

(c) In accordance with Council's Community Engagement Strategy 2019 the modification application was notified to the broader surrounding properties with an exhibition date between 28 June and 12 July, 2021. A total of 3 submissions (1 submission has been amended) were received in response.

(d) The submissions have been considered as discussed later within this report.

The modification application has also been considered against the matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act, 1979 that are of relevance to the application later within this report.

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 Development with frontage to classified road

The modified proposal will not impact access/egress arrangements and it is noted that the 24/7 operation was previously approved on a trial period basis. In this regard, the modified proposal is not considered to adversely impact the operation of The Northern Road.

Clause 104 Traffic-generating development

Modification application DA10/1209.03 was referred to Roads and Maritime Services noting that a drive thru component was proposed. The trigger for traffic generating development does not include increased hours of operation. In this regard, the modified proposal is not considered to require a referral to Transport for New South Wales.

State Environmental Planning Policy No 55—Remediation of Land

In accordance with Clause 7 Contamination and remediation to be considered in determining development application "a consent authority must not consent to the carrying out of any development on land unless:

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose."

The modified proposal relates to hours of operation with no amendments to or additional built forms provided. The modified proposal relates to a conditionally approved food and drink premises with a drive thru component located on a hardstand area. In this regard, there are no land contamination concerns associated with the modified proposal.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

The modified proposal remains in keeping with the requirements of SREP No. 20 and appropriate conditions of consent remain in place.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Does not comply - See discussion
Clause 2.3 Zone objectives	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.5 Protection of scenic character and landscape values	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

Clause 2.3 Permissibility

The modified proposal relates to the hours of operation for the approved food and drink premises component of the complex. A food and drink premises including restaurants or cafes and take away food and drink premises are prohibited in the sites RU4 zone under the provisions of the PLEP.

It is noted that the site benefits from existing use rights for the food drink premises component. Under existing use right provisions the food and drink premises was previously intensified and extended via DA10/1209 (as modified). DA10/1209.03 provided for the drive thru component and a 12 month trial period for 24/7 drive thru operation. The modification application seeks to amend the 24/7 trial period to an on-going permanent arrangement.

In this regard, existing use right provisions apply to the modified proposal as discussed later within this report.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	Complies - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	N/A
D1.1. Rural Character	Complies - see Appendix - Development Control Plan Compliance
D1.2. Rural Dwellings and Outbuildings	N/A
D1.3. Farm buildings	N/A
D1.4 Agricultural Development	N/A
D1.5. Non-Agricultural Development	Complies

Section 79C(1)(a)(iv) The provisions of the regulations

Commentary has been provided relating to the intensification of the existing use. Existing conditions of consent will remain relating to compliance with the applicable parts of the regulations.

Section 79C(1)(b)The likely impacts of the development

The modified proposal has been accompanied by crime risk and management documents to address anti-social behaviour impacts associated with late night and early morning operation however, after the trial period for 24/7 operation submissions have been received relating to people accumulating and anti-social behaviour. NSW Police comments and a review of both Council's and McDonald's complaint register does not indicate that any complaints or police call outs have been made for the McDonalds restaurant relating to anti-social behaviour. In this regard, the likely amenity impacts of the rural surrounds associated with 24/7 drive thru operation are uncertain. The trial period is to be extended for 18 months and submitter's are to be made aware of complaint avenues to determine whether amenity impacts can be resolved or whether the permanent 24/7 operation of the drive thru component is not appropriate for the area.

Section 79C(1)(c)The suitability of the site for the development

Noting the extension of the operational trial period and the security, safety and management measures imposed the site and surrounds are considered suitable for the modified proposal.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Council's Community Engagement Strategy 2019 the modification application was notified to the broader surrounding properties with an exhibition date between 28 June and 12 July, 2021. A total of 3 submissions (1 submission has been amended) were received in response. The submissions raised concerns relating to the following;

- anti-social behaviour from people accumulating,
- litter control,
- request for security guard,
- delivery truck timing, and
- police call outs to no effect.

The concerns raised in submissions have been considered as follows;

The modified proposal has been accompanied with documentation suggesting that McDonald's staff can and will implement crowd control measures to ensure people accumulating inside and outside the store is de-escalated for crowd management purposes and to address amenity impacts associated with people accumulating noting the hours of operation proposed.

The applicant has responded stating that the litter control path and times are suitable.

In relation to the request for a security guard please see the above comments relating to crowd control measures by McDonald's staff.

The modification application does not seek to amend delivery times. It is noted that approved delivery times is between 9am – 5pm Monday to Saturday. If these times are not being complied with you can contact McDonald's directly or Council.

The modification application was referred to NSW Police which provided comments stating that no calls out were associated with this property. It was mentioned that sometimes these call out requests are not registered as they must have an event number recorded to be registered. In this regard, any future calls to NSW Police relating to impacts associated with the McDonald's operation should be requested to be registered so NSW Police can track complaints and this information can be provided to Council.

The submitter's were also made aware of the following to assist substantiate claims.

The McDonald's restaurant has implemented a Plan of Management which suggests that complaints can be directed to McDonalds relating to their operation and then registered on their complaint register. In addition, complaints relating to the operation can be forwarded to Council.

This will assist assessing amenity impacts for future applications relating to the hours of operation of the restaurant noting that the 24/7 operation of the drive thru is on a trial basis currently.

It is noted that the submitter's were made aware that the trial period for 24/7 drive thru operation was being extended not permanent 24/7 drive thru operation.

A response from submitter's to correspondence relating to how concerns were addressed and considered as part of the assessment has not been received. In this regard, these matters are considered resolved.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Environmental - Environmental management	No objections - subject to conditions
Community Safety Officer	No objections - subject to conditions

Section 79C(1)(e)The public interest

Conclusion

In assessing the modified development against relevant environmental planning instruments the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the modified development, the modified proposal is in the public interest and there is unlikely to be negative impacts arising from the modified development. Therefore, the modification application is worthy of support and is recommended for approval, subject to recommended condition amendments.

Recommendation

That DA21/0410 modification application of DA10/1209 (as modified) to allow permanent 24/7 operation of the drive thru component for the McDonalds restaurant at 1-21 Cranebrook Road, Cranebrook be approved subject to the below recommended condition amendments and additions.

It is noted that after reviewing the modified proposal the recommended condition amendments will provide for an 18 month extension to the trial period for 24/7 drive thru operation as opposed to permanent 24/7 operation for the drive thru component.

Condition 28 to now read - The drive thru facility and associated kitchen and preparation areas are permitted to operate 24 hours a day, seven days a week for an additional 18 month trial period commencing from the date of issue of this modified consent.

Any request for permanent 24 hour operation requires consideration by way of a further application which must be submitted to, and favourably determined prior to continuance of the extended operation occurring.

Condition 106 added - Store Management will be available at a mutually convenient time, at the invitation of Penrith City Council and/or the NSW Police, to discuss and action agreed Community Safety, Security or other issues in conjunction with other local stakeholders in the area should the need arise.

Condition 107 added - Crime Prevention through Environmental Design provisions addressed in the Plan of Management dated June 2021 and Crime Risk Assessment reference no. 631.30322.00000 and dated 11 June, 2021 must be adhered too.

CONDITIONS

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site Planning and Design Principles

The modification application has been reviewed by both NSW Police and Council's Community Safety Officer. NSW Police advised that no calls out to the subject property were received and raised no comments or objections to the proposed permanent 24/7 drive thru operation. Similarly, Council's Community Safety Officer raised no objections to the proposal noting the crime prevention measures specified in the accompanying Crime Risk Assessment Report and Plan of Management.

It is noted that the previous modification application which provided the trial 24/7 operation period of the McDonalds (DA10/1209.03) required a Security Plan of Management to be developed relating to security, access control and reporting practices. The Plan was developed and implemented during the trial period. As such, the complaint register was requested to be submitted for review. The complaint register did not detail any complaints relating to security or anti-social behaviour issues.

Nonetheless, the modification application has received submissions relating to anti-social behaviour such as cars reeving, party buses unloading numerous amounts of people causing a disturbance, people kicking over bins etc and safety and security resulting from accumulation of people late at night.

In this regard, and considering majority of the trial period was during lockdown arrangements, the 24/7 drive thru operation trial period is to be extended by 18 months to allow a trial when operation is at a typical capacity. Further to the above, the submitter will be advised that when calling the NSW Police to complain about the premises to ensure the complaint is registered to ensure NSW Police can track the complaints at the premises. In addition, the McDonald's can be contacted directly for complaints relating to their operation. The submitter's will be made aware of this to rectify/track complaints made.

C12 Noise and Vibration

The application has been accompanied by a Noise Assessment which concludes that noise loggers at sensitive receivers did not exceed specified thresholds. Council's Environmental Management Team reviewed the assessment and raised no objections to the proposal.

It is noted that noise impacts associated with gathering of people can be addressed by crowd control measures such as, McDonalds staff being capable of moving people on inside and outside the restaurant. In addition, these incidents are reported in an incident register.

Nonetheless, the success of these measures can be determined by the extended trial period.

D1 Rural Land Uses

The modification application demonstrates that suitable measures are in place to address security, safety and amenity concerns associated with permanent late night operation of the restaurant noting the rural surrounds however, numerous submissions have been received relating to the above concerns. In this regard, the extension of the trial period, and informing of how to ensure complaints are registered/addressed will provide a better understanding of the impacts the permanent 24/7 drive thru operation of the restaurant will have on the rural surrounds.