

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA19/0604
<b>Proposed development:</b>	Extension of Operating Hours to 24hours per day, 7 days per week for an Existing McDonald's
<b>Property address:</b>	4 Endeavour Avenue, ST CLAIR NSW 2759
<b>Property description:</b>	Lot 2 DP 1018519
<b>Date received:</b>	28 August 2019
<b>Assessing officer</b>	Jacqueline Klincke
<b>Zoning:</b>	Zone B2 Local Centre - LEP 2010
<b>Class of building:</b>	Class 6
<b>Recommendations:</b>	Approve

### Executive Summary

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Council is in receipt of a development application seeking an extension of trading hours to 24 hours, 7 days a week for St Clair McDonald's at 4 Endeavour Avenue, St Clair. Under the *Penrith Local Environmental Plan 2010*, the proposal is defined as commercial development. The subject site is zoned B2 Local Centre and the proposal is a permissible land use in the zone with Council consent.

A condition of consent is recommended for an 18-month trial period to monitor any concerns regarding potential anti-social behaviour and business management practices. Prior to the expiry of this trial period, a modification application for the extended operating hours will need to be lodged for the continuation of, or incorporation (into the approved base hours) of the extended operating hours.

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014*, the proposal was notified to fifty-three (53) nearby and adjoining properties and publicly exhibited for a period of fourteen days between 10 September and 24 September 2019. No submissions were received in response.

An assessment under Section 4.15 of the *Environmental Planning and Assessment Act 1979* has been undertaken and the application is recommended for approval, subject to the recommended conditions of consent.

## Site & Surrounds

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The subject site is located southwest of the intersection of Bennett Road and Endeavour Avenue and is occupied by St Clair McDonald's within St Clair Shopping Centre. The site is legally defined as Lot 2 DP 1018519 and is known as 4 Endeavour Avenue, St Clair.

The surrounding area is characterised by existing commercial premises and car parking adjoining the subject tenancy; a pre-school, Uniting Church and Leisure Centre to the south, St Clair High School to the west; Bennet & Endeavour Soccer Field to the north; and a day car centre, a number of health consulting rooms and established R2 Low Density Residential properties to the east.

### **Existing McDonald's Restaurant:**

The current hours for the restaurant are from 6am - 10pm Monday to Sunday. The restaurant also includes a drive-thru and McCafe. The drive-thru facility runs along the northern and western boundaries with vehicles entering and existing the site from the Bennett Road and Botany Land roundabout and via the St Clair Shopping Centre car park.

### **Site Constraints:**

The subject site is affected by an easement for services 1m wide and 2m wide, an easement 1m wide for electricity purposes, and a 1m easement for drainage.

### **Site History:**

- DA986577 - approval for the construction of a McDonald's Family Restaurant with seating capacity for 48 people, a drive-thru facility, and the use of 10 car parking spaces within the existing shopping centre
- DA07/1181 - approval for alterations and additions including provision of McCafe, extension to dining area, upgrade of external facade, and roof over playland.
- DA09/0116 - approval for alterations and additions including the expansion of the storage area and crew room, and reconfiguration of drive-thru.
- DA09/0355 - refusal of extended operating hours to 24 hours, 7 days a week.

DA09/0355 for the extension of operating hours to 24 hours, 7 days a week, was refused by Council in 2009 due to the likely impacts of anti-social behaviour, potential increase risk of crime, reduced safety and security to the restaurant staff and patrons, and potential negative impacts on the amenity, livelihood and quality of life of the surrounding residential area. Whilst similar issues are of concern for this subject application, the proposal was referred to Council's Community Safety Officer who raised no objections, subject to the recommended conditions of consent. In addition, to monitor any concerns regarding anti-social behaviour, examine the performance of the business management practices, and review any complaints received from surrounding properties and views expressed by the Police, an 18-month trial period is recommended via a condition of consent.

## Proposal

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The proposal seeks approval to extend the hours of operation of an existing McDonald's restaurant from 6am-10pm Monday to Sunday, to 24-hours, seven days a week, including both the internal restaurant and drive-thru operations.

Deliveries and service hours remain unchanged as part of the proposed extended hours of operation.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

### • Section 4.15 - Evaluation

The proposal has been assessed in accordance with the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and having regard to those matters, the following issues have been identified for further consideration.

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

##### **Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River**

An assessment has been undertaken of the proposal against the relevant criteria within the *Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)* and the application is satisfactory subject to recommended conditions of consent.

##### **Local Environmental Plan 2010 (Amendment 4)**

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies
Clause 4.3 Height of buildings	N/A
Clause 4.4 Floor Space Ratio	N/A

#### Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument

It is noted that both the *Draft Environmental SEPP* and *Draft Remediation of Land SEPP* apply to the subject site but while so, do not affect or alter the recommendation of 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
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	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
C13 Infrastructure and Services	Complies

#### Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to the proposal.

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

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia and fire safety requirements, have been previously imposed as conditions in previous applications. In this regard, the proposed modifications are not considered to diminish the development's compliance with these regulations.

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

Under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, consideration must be given to the likely impacts of the proposal, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

#### **Noise Impacts:**

In regards to potential noise impacts, the application was accompanied by a Noise Assessment Report, prepared by Muller Acoustic Consulting, dated 14 June 2019 for the proposed 24-hour operations of the restaurant. The Noise Assessment is based upon the 'worst case scenario' and uses modelling based upon input data of patrons yelling, car doors slamming and multiple events occurring simultaneously and concludes that noise predictions are significantly below applicable criteria at all surrounding residential receivers, including during the night-time period. The Noise Assessment Report was referred to Council's Environmental Management Department who considers the report satisfactorily assesses the potential impact of the proposed extended operating hours in accordance with the NSW EPA Noise Policy for Industry 2017, *Protection of the Environment Operations Act 1997* and applicable Australian Standards.

A condition of consent is recommended requiring noise levels from the premises to not exceed the relevant noise criteria detailed in the Noise Assessment Report and requires the owner of the development to provide Council a Noise Impact Assessment should any noise complaints arise. In addition, the submitted Plan of Management, prepared by McDonald's Australia Limited, dated August 2019, outlines the Duty Manager will closely monitor the noise produced at the premises. Adherence to all policies, procedures and mitigation measures outlined in the Plan of Management is ensured through a recommended condition of consent. In this regard, it is considered that the proposal will not cause significant acoustic impacts on the surrounding locality and the nearby residential properties.

#### **Safety and Security**

It is noted that the 24 hour operations of the restaurant may cause anti-social behaviour. Whilst the provided Plan of Management outlines various safety and security measures that will be implemented to enhance safety and minimize opportunities for antisocial behavior, an 18-month trial period is recommended via a condition of consent in relation to the proposed extension of operating hours. This is to monitor any concerns regarding potential anti-social behaviour, examine the performance of the business management practices, and review any complaints received from neighbouring properties and the views expressed by the Police, a modification application will be required to be submitted for any continuance or incorporation (into the approved base hours) of the extended hours of operation.

In addition, the application was referred to Council's Community Safety Officer who assessed the proposal against Part C1.2.5 of the *Penrith Development Control Plan 2014* and the Crime Prevention through Environmental Design principles. The Community Safety Officer raised no objections to the proposal, subject to adherence to the policies, procedures and mitigation measures outlined in the Plan of Management which is ensured via a recommended condition of consent.

#### **Impact on Public Domain**

The submitted Plan of Management outlines that the Duty Manager will ensure regular litter patrols, with additional litter controls during Saturdays and Sundays will be undertaken by crew members to help mitigate the potential litter impact on the surrounding environment. In addition, bins are located in and around the premises. Furthermore, any vandalism and graffiti will be removed (where possible) within 24 hours. Adherence to these procedures and policies will be ensured through a condition of consent. In this regard, it is considered that there will be no adverse impacts on the surrounding public domain.

## **Access, Traffic and Parking**

There are no changes proposed to the existing access or parking arrangements on site, and therefore, the proposal is considered to have minimal impact with regards to impacts on traffic flows, circulation, vehicle volumes and access to/from the site. Furthermore, the provided Statement of Environmental Effects, prepared by KDC, dated 29 August 2019 states that 'the proposed extension to trading hours is not likely to compromise any significant impacts on traffic movements on the surrounding road network, as it would not be considered a predetermined "destination" for food during the extended hours, instead capturing passing trade. The surrounding road network has the capacity to accommodate traffic movements associated with the proposal given they are outside peak times".

The application was referred to Council's Traffic Engineer who raised no objections, however recommended a condition of consent ensuring a lighting assessment of pedestrian areas adjacent to the restaurant be undertaken and implement the recommendations of the assessment which may include upgrading the lighting of pedestrian access and crossing points within the car park and associated areas. Therefore, it is considered that the proposal will not cause any adverse impacts to the current access, parking and traffic conditions of the locality.

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

The proposed extension of operating hours do not diminish the suitability of the site for the development noting that noise level impacts are considered acceptable and a condition of consent is recommended ensuring adherence to the approved Plan of Management, dated August 2019, in order to enhance community safety and minimise opportunities for potential anti-social behaviour.

## **Section 79C(1)(d) Any Submissions**

### **Community Consultation**

In accordance with Appendix F4 - Notification and Advertising of the *Penrith Development Control Plan 2014*, the application was notified to fifty-three (53) nearby and adjoining properties and publicly exhibited between 10 September and 24 September 2019. No submissions were received in response.

### **Referrals**

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

<b>Referral Body</b>	<b>Comments Received</b>
Environmental - Environmental management	No objections - subject to conditions
Environmental - Public Health	No objections
Traffic Engineer	No objection subject to conditions
Community Safety Officer	No objections - subject to conditions

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

In consideration of the nature and scale of the development, in addition to the proposal being compliant with the applicable development controls, the health and safety of the public will not be adversely affected and therefore the development will not generate any significant issues of public interest.

## **Section 94 - Developer Contributions Plans**

There are no Section 7.11 Development Contributions applying to this proposal.

## **Conclusion**

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The proposed extension to trading hours have been assessed against the relevant heads of consideration under the *Environmental Planning and Assessment Act 1979* and have been found to be satisfactory. It is considered that the development will result in minimal environmental impacts, the site will remain suitable for the development, and the development is in the public interest. Given that there are no outstanding planning considerations and that the application is in accordance with the relevant environmental planning instruments, the application is worthy of Council's support and is recommended for approval.

## **Recommendation**

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1. That DA19/0495 for the extension of McDonald's Family Restaurant trading hours to 24 hours, 7 days a week, at 4 Endeavour Avenue, St Clair be approved, subject to the attached conditions.

# CONDITIONS

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## General

### 1 [A001 - Approved plans table](#)

The development must be implemented substantially in accordance with the following stamped approved documents issued by Council, the application form, any other supporting documentation and by the following conditions.

- Noise Impact Assessment, prepared by Muller Acoustic Consulting Pty Ltd, Document ID: MAC190847RP1, dated 14 June 2019
- Plan of Management, prepared by McDonald's Australia Ltd, dated August 2019

### 2 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)

The approved **base** hours of operation for the McDonald's Restaurant is as follows:

6:00am - 11:00pm Mondays to Sundays

***In addition to the above, approval is granted for extended hours of operation, for a period of 18 months from the date of this consent as follows:***

***11:00pm - 6:00am Mondays to Sundays***

***A modification application is to be lodged with Council, a minimum of 3 months prior to the completion of 18 months, for the extension of, or incorporation (into the base hours) of the extended operating hours.***

### 3 [A Special 1](#)

Store Management shall 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.

### 4 [A Special 2](#)

The policies, procedures and mitigation measures outlined in the Plan of Management, prepared by McDonald's Australia Limited, dated August 2019 must be adhered to in perpetuity.

## Environmental Matters

### 5 [D013 - Approved noise level 1](#)

Noise levels from the premises shall not exceed the relevant noise criteria detailed in the Noise Assessment Report (Reference:MAC190847RP1) prepared by Muller Acoustic Consulting and dated June 2019. The provisions of the *Protection of the Environment Operations Act 1997* apply to the development, in terms of regulating offensive noise.

### 6 [D Special \(BLANK\)](#)

In the event of noise complaints relating to the development being received by Council, the owner and/or occupier of the development may be required by Council to obtain the services of a suitably qualified acoustic consultant to undertake a noise impact assessment on the development to address the concerns of the community.

The noise impact assessment report is to be prepared and provided to Council for approval within forty-five (45) days of being required. Any mitigation works are to be undertaken within (30) days from the date of notice from Council, unless otherwise specified.

## Engineering

### 7 [K Special \(BLANK\)](#)

**Prior to the commencement of the extended operating hours**, the applicant shall engage a suitably qualified person to undertake a lighting assessment of pedestrian areas adjacent to the restaurant (particularly where pedestrians are directed to cross the drive-thru entry), and implement the recommendations of the assessment, which may include (but not limited to) upgrading the lighting of pedestrian access and crossing points within the immediate private car parking and associated areas.