

11 June 2021

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The General Manager  
Penrith City Council  
PO Box 60  
PENRITH NSW 2751

Dear Sir/Madam,

**RE: Modification Application Under s4.55(2) to DA10/1209.04 at 1-21 Cranebrook Road, Cranebrook NSW 2749**

## **1 Introduction**

SLR Consulting Australia Pty Ltd (SLR) acts on behalf of its client McDonald's Australia Limited (McDonald's) in preparing this supporting Statement of Environmental Effects (SEE) for a proposed s4.55(2) modification to DA10/1209.04 located at 1-21 Cranebrook Road, Cranebrook NSW 2749. The proposal aims to formalise the 24-hour, 7-day trade at the site.

This Statement of Environmental Effects (SEE) describes the site, its environments, the proposed modification and an assessment of the proposal in terms of the matters for consideration under *Section 4.55 of the Environmental Planning and Assessment Act 1979* (EP&A Act 1979). The report should be read in conjunction with the supporting information appended to this letter.

### **1.1 Background**

The original consent relating to the site was approved under DA10/1209 for a "service station, convenience store, and takeaway food and drink premises" in 2012.

Several modifications have been approved on site, the latest of these and most relevant to this modification application: On 13 November 2018 development consent was granted for "Section 4.55 Modification to an Approved Service Station Development (Modifications to the Restaurant Component including Roof, Facade Treatment, Internal Layout and Signage)" under DA10/1209.04.

As part of the conditions of consent under DA10/1209.04, the prescribed operating hours allowed for 24 hour trade across the site for a trial period of 12 months.

### **1.2 McDonald's Australia and the Community**

There are approximately 1005 McDonald's operations Australia wide, the vast majority of which are either owned or operated by members of the local business community. McDonald's Australia serves approximately 1.2 million people a day and provides job opportunities for over 100,000 people Australia wide.

Since 2002, McDonald's Australia has implemented a number of alternative healthy eating options and choices. McDonald's Australia is a well-known and respected company across Australia, known for its food product, well trained staff and new and improved designs.

McDonald's Australia not only provides employment opportunities and a high standard of food and service, it also works closely with and supports a number of charities and local groups. This is mainly through major sponsorship, supporting local teams, providing educational, environmental, artistic and sporting programs and charity work (i.e., Ronald McDonald House charity, 'Clean up Australia Day').

## 2 The Site & Surrounds

The site is legally defined at Lot 3 in DP 215949 and generally known as 1-21 Cranebrook Road, Cranebrook (refer to Figures 1 & 2 below).

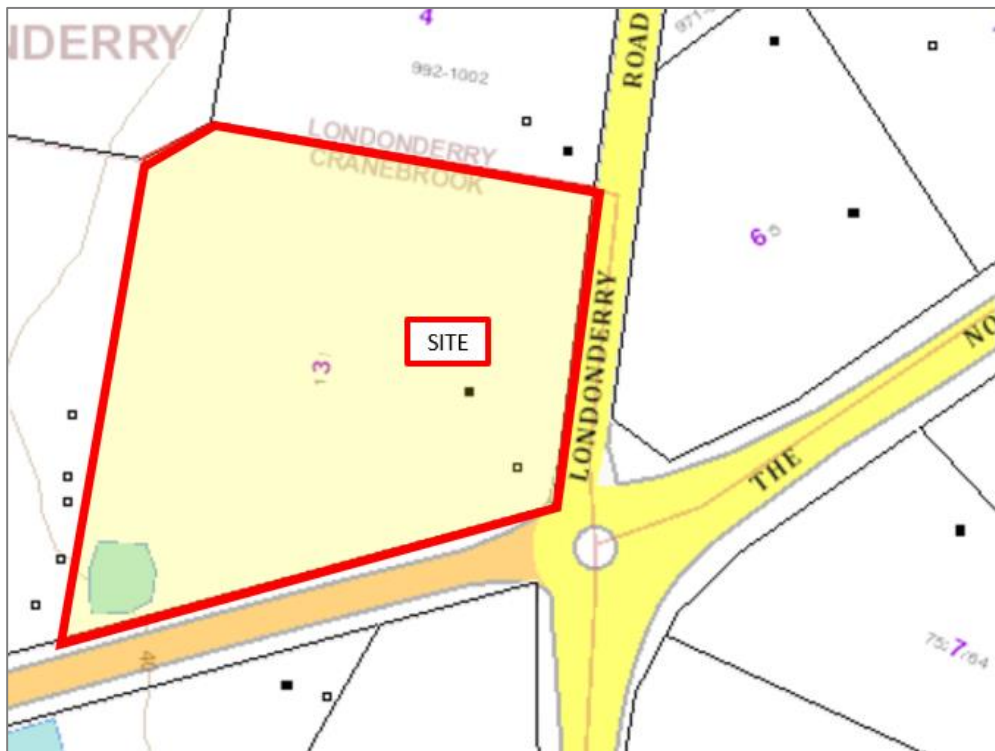
The site extends to 3.63ha (36,300m<sup>2</sup>) in size, and is located on relatively flat area. The site contains the newly developed McDonald's combined with a Shell service station, with associated parking, landscaping, and drive-thru facilities. The lots adjacent to the site are primarily of residential and agricultural nature. The site is located adjacent to a four-exit roundabout, with exits to Cranebrook Road, Londonderry Road and The Northern Road available.

The site is situated within the Penrith Local Government Area (LGA) governed by Penrith City Council. It is located approximately 5km north of the town centre, on the northern side of Cranebrook Road, a State Classified Road. The McDonalds operation operates on the site as a joint tenancy with the Shell service station, which trades on a 24/7 basis. Figure 1 demonstrates the location of the site within the context of the surrounding locality.

**Figure 1 – Site Aerial (Source: Nearmap)**



Figure 2 – Cadastre Plan (Source: Six Maps)



### 3 Proposal

This proposed modification application seeks to formalise the 24 hour, 7 day trading for the McDonald's, which would otherwise conclude under the trial period initiated by DA10/1209.04.

To achieve this, the following conditions are required to be amended or removed:

Existing consent extract:

*28) The drive thru facility and associated kitchen and preparation areas are permitted to operate 24 hours a day, seven days a week for a 12 month trial period commencing from the date of issue of the occupation certificate.*

*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. As amended on 18 November 2016 under S96 of the Environmental Planning and Assessment Act, 1979.*

It is proposed to redraft Condition 28, through a submission to allow for the continuance of an extended operation occurring. The condition is proposed to read as follows:

*28) The drive thru facility and associated kitchen and preparation areas are permitted to operate 24 hours a day, seven days a week ~~for a 12 month trial period commencing from the date of issue of the occupation certificate.~~*

*~~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. As amended on 18 November 2016 under S96 of the Environmental Planning and Assessment Act, 1979.~~

**Justification:** The proposed permanency to the trading hours of the McDonald's site is considered to be of minor impact, in terms of noise and other associated environmental/amenity impacts. It is not anticipated that permanency to the extended 24/7 trading hours will result in an increase to anti-social behaviour in the area. No complaints were received during the previous trial period relating to the extension of hours, and good performance was demonstrated with the operation trading in accordance with the previously approved Plan of Management (Appendix C).

A Noise Assessment (NA) was conducted by Muller Acoustic Consulting Pty Ltd (MAC) in support of this application. It was confirmed in the certification that the installed noise control measures are consistent with those recommended in the NA. See further discussion in Section 5.1 of this report, with the full NIA located at Appendix A.

## 4 Legislation & Planning Controls

The following legislation, Environmental Planning Instrument (EPI) and Development Control Plan (DCP) are relevant to the proposed amendment:

- Environmental Planning and Assessment Act 1979;
- Penrith Local Environmental Plan (LEP) 2010;
- Penrith Local Development Control Plan (DCP) 2014; and,
- Land and Environment Court Planning Principles: Existing Use Rights Merit Assessment.

### 4.1 Environmental Planning and Assessment Act 1979

It is considered that the proposed modification of the development consent is substantially the same development as for which the original consent was granted and is of minimal environmental impact. Accordingly, the approval path for the proposed modification is via Section 4.55 *Modification of consents—generally*; Section 4.55 (2) *Other modifications*, under the EP&A Act 1979.

#### Section 4.65 – Definition of “Existing Use”

- the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4 of this Part, have the effect of prohibiting that use, and*
- the use of a building, work or land:*
  - for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
  - that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

The use and development of the site as a McDonalds premises has been approved. The use of the site for the purposes of a McDonalds operation is known to have continued since approval.

## Section 4.66 - Continuance of and Limitations on Existing Use

Section 4.66 (3) provides that an existing use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months, in which case the continuation of the use is not permitted. The use of the site for the purposes of a McDonald's is known to have continued since approval, with no cessation of the use for a period of 12 months or more within that period.

## Section 4.67 - Regulations Respecting Existing Use

1. *The regulations may make provision for or with respect to existing use and, in particular, for or with respect to:*
  - a. *the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*
  - b. *the change of an existing use to another use, and*
  - c. *the enlargement or expansion or intensification of an existing use.*
2. *The provisions (in this section referred to as the incorporated provisions) of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.*
3. *An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.*

The proposal may be considered an intensification of an existing use, referenced in 1(c) above. The proposal will not change the existing use of the site, only increasing the extent of operational hours. The incorporated provisions, contained within the Regulation 2000, are addressed below.

## 4.2 Environmental Planning and Assessment Regulation 2000

### Clause 41- Certain Development Allowed

1. *An existing use may, subject to this Division:*
  - a. *be enlarged, expanded or intensified, or*
  - b. *be altered or extended, or*
  - c. *be rebuilt, or*
  - d. *be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
  - e. *if it is a commercial use-be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or*
  - f. *if it is a light industrial use-be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).*

The proposal may be considered an intensification of the existing use; which facilitates the McDonald's operation to be available at all hours.





## Clause 42 - Development consent required for enlargement, expansion, and intensification of existing uses

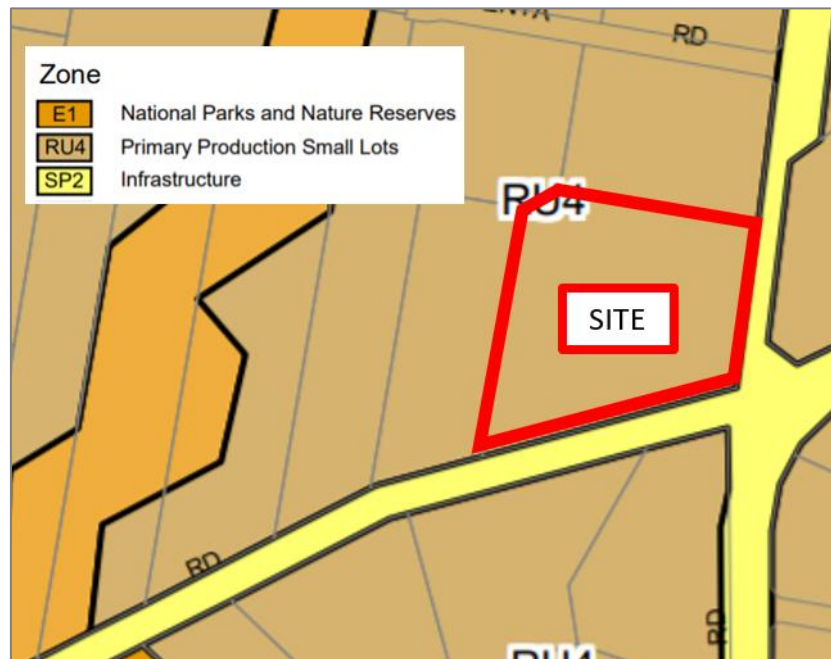
1. Development consent is required for any enlargement, expansion or intensification of an existing use.
2. The enlargement, expansion or intensification:
  - a. must be for the existing use and for no other use, and
  - b. must be carried out only on the land on which the existing use was carried out immediately before the relevant date.

The proposed change of hours is related to the existing McDonald's use and no other use.

### 4.3 Penrith Local Environmental Plan (LEP) 2010

The site is zoned RU4 Primary Production Small Lots under the provisions of the Penrith LEP 2010 (refer to Figure 3 for zoning extract).

Figure 3 – Zoning Map Extract from Penrith LEP 2010 (LZN\_011)



While the approved use is not permissible in the RU4 zone under the 2010 LEP; the use of the site has existing use rights. The relevant provisions of the EP&A Act 1979 are discussed below.

### 4.4 Penrith Development Control Plan (DCP) 2014

The Penrith Development Control Plan (DCP) 2014 provides detailed guidelines to guide the design and assessment of development applications for land covered by Penrith LEP 2010.

The proposal has been prepared having due regard for the provisions of Penrith DCP 2014 and meets all of the relevant controls contained within the DCP. An assessment of the relevant development controls has been carried out and a table of compliance is located at Appendix B.

The overall building design, including signage, remains unchanged and the arrangements on site in regard to waste management, deliveries, access, and car parking also remain unchanged by this application.

## 4.5 Land and Environment Court Planning Principles: Existing Use Rights Merit Assessment

The proposal is assessed against the four questions that usually arise in the assessment of existing use rights developments below:

### 1. **How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites? (Principle 1)**

*“While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.”*

#### Response:

The scale, setback, bulk and height of the existing building will remain unchanged. The existing building incorporates appropriate design features such as a visually attractive facade and complementary building materials that maintain privacy to adjoining properties. The proposal therefore satisfies this question.

### 2. **What is the relevance of the building in which the existing use [sic] takes place? (Principle 2)**

*“Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.”*

#### Response:

As described above, the change of hours is subject to an existing building footprint and the scale and bulk is therefore appropriate. There is no change to the building floor area or envelope. The proposal therefore satisfies this question.

### 3. **What are the impacts on adjoining land? (Principle 3)**

*“The impact on adjoining land should be assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.”*

#### Response:

The amenity of adjoining residences is upheld through the proposal where noise and privacy have been taken into consideration. The Noise Assessment at Appendix A of the SEE concludes that the noise associated with the proposed hours will not be unreasonable. Given the location of the site and attenuation measures, coupled with the design and scale of the building; the proposed operational hours will not have an unreasonable impact on neighbours. The proposal therefore satisfies this question.

### 4. **What is the internal amenity? (Principle 4)**

*“Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a*



*matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights have lower amenity than development generally.”*

**Response:**

The proposal upholds the existing amenity and functionality within the site and for the adjoining lands. The proposal therefore satisfies this question. The proposed changes to the McDonald's operation hours are therefore consistent with the test established in the Land and Environment Court for merit assessment of existing uses.

## **5 Assessment of Planning Issues**

The following is an assessment of the environmental effects of the proposed development as described in the preceding sections of this report. The assessment considers only those matters under Section 4.15 (1) of the EP&A Act which are relevant to the proposal.

### **5.1 Noise**

Certification of the sites acoustic impacts have been measured and documented by Muller Acoustic Consultants (MAC) and attached at Appendix A. The assessment included attended noise monitoring during the trial period at the nearest sensitive receivers. The results of the compliance monitoring demonstrate that noise emissions from the proposal satisfy the relevant Project Noise Trigger Levels (PNTLs) at all assessed receivers. Furthermore, sleep disturbance is not anticipated, as emissions from compact noise remain below the EPA guideline for maximum noise level screening criteria. Therefore, according to the report, there are no noise related issues which would prevent Council approved the proposed modification. For further information regarding the noise impact refer to Appendix A.

### **5.2 Safety and Security**

The proposal will have minimal impact on the existing safety and security of the McDonald's operation. McDonald's will ensure the safety and security of the site through the approved Plan of Management (PoM), at Appendix C, which deals with such matters as the amenity of the neighbourhood, lighting, surveillance equipment, vandalism, noise, anti-social behaviour, and security.

A number of measures area already used to ensure the safety and security of the site, including:

- Surveillance;
- Control and monitoring of access;
- Activity and space management; and
- Training in emergency situations and on cash handling.

By continuing to utilise these measures throughout the extended operation, it is considered that the premises will upkeep the safety of the site. Should any issues arise during the extended hours, the operation will be managed efficiently by the store manager in accordance with the PoM. The approved Crime Prevention Through Environmental Design (CPTED) assessment is attached at Appendix D and will remain current for this proposed modification.

McDonald's trades over 650 sites during late night hours nationally and have been operating sites during late night trade hours for over 20 years and in doing so understand the risks and responsibilities that are required to be considered and managed when trading during late night hours. McDonald's standard operating policies are

in place at all of their operations to mitigate and manage these risks as well as the impact for staff and the surrounding amenity relating to late-night trade.

It is considered that the modification will not detract from the safety and security of the area.

### 5.3 Odour

The proposal will have minimal impact on surrounding premises from the potential night-time odours or air emissions associated with cooking and waste storage in the premises. The McDonald's will continue to operate in accordance with the Food Standards Code and relevant Australian Standards.

### 5.4 Traffic, Parking, and Access

The proposed modification to extend the trading hours is not likely to result in any significant impacts on traffic movements on the surrounding road network, as the drive-thru will predominantly capture passing trade. The proposed modification provides an opportunity for residents and visitors to continue to be able to access the McDonald's operation outside peak traffic hours. There are no changes proposed to the existing access.

Noting that there are no changes proposed to the existing access or parking arrangements on site, the proposal is considered to be minor in nature with regard to impacts on traffic flows, circulation, and vehicle volume movements to and from the site. The proposal therefore does not impact on the existing approved conditions regarding traffic, parking, and access.

### 5.5 Lighting

The existing external lighting will be utilised during the extended trading hours, and therefore the site will be lit from dusk to dawn. The existing lighting will enable clear surveillance and has been designed to prevent concealment and shadowing. The standard of lighting is designed to not only reduce the fear of crime in accordance with Australian lighting standards, but also serves to provide clear identification of activity using the high technology CCTV cameras.

Lighting is generally directed internally within the site to prevent light spill on nearby land uses. The orientation and screening of the drive thru, as well as carpark ensures minimal adverse impacts on adjoining properties and roads.

### 5.6 Public Interest

The proposal is considered to be in the public interest as it will deliver a number of public, social, and economic benefits with minimal adverse impacts. The proposal will allow McDonald's to continue to provide low cost, convenient fast-food services to service the needs of neighbouring businesses, local community, and tourists. Furthermore, the trial period has demonstrated that the late-night operating of the Cranebrook McDonald's will not impact the security of the surrounding area and can provide a positive late-night trading local business. The McDonald's operation will generate increased employment opportunities for existing and new staff which is a direct result of the proposed extended trading hours.

## 6 Conclusion

The proposed modification at 1-21 Cranebrook Road, Cranebrook (DA10/1209.04) will formalise the approved 24 hour/7 day trade, concluding the trial period.

It has been established through the Noise Assessment acoustic modelling that the proposal will not result in unacceptable impact to the nearest residential noise receptors and the emissions will comply with the current noise policy.

The proposed modification will not result in any physical works, alterations to the approved building, or other operations on the site, and will remain consistent with the approved DA (DA10/1209.09) and the Penrith LEP 2010.

As discussed above, the proposed amendment is minor in nature and will result in substantially the same development to which consent has been granted. It is generally consistent and compliant with the aims and objectives of all relevant planning instruments and controls.

Given the merits of the proposal and the absence of any significant adverse environmental impacts, the DA is considered to be in the public interest and is recommended for Council's support.

We thank you for the opportunity to lodge this application and look forward to timely approval. Should you have any questions please do not hesitate to contact the undersigned.

Yours sincerely,

Theo Klok  
Town Planner  
SLR Consulting Australia Pty Ltd

### Appendices

Appendix A – Noise Assessment

Appendix B – DCP Compliance Table

Appendix C – Plan of Management

Appendix D – Crime Prevention Through Environmental Design Assessment

## APPENDIX A – ACOUSTIC REPORT

## APPENDIX B – PENRITH DCP 2014 COMPLIANCE TABLE



## APPENDIX C – PLAN OF MANAGEMENT

## APPENDIX D – CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN REPORT