



Our Ref: 21.006

Your Ref: DA17/1199

28 January 2021

General Manager
Penrith City Council
PO Box 60
Penrith NSW 2751

Dear Sir

Re: DA17/1199 – Application under Section 4.55 (1A) of Environmental Planning and Assessment Act 1979

I refer to the above application and advise we have been requested to assist with a Section 4.55 modification of the approved development. This submission is to be considered as a Statement of Environmental Effects for the application.

1. History and Proposed Modification

This application seeks to extend the hours of operation of the existing 'Percy Plunkett' café/restaurant.

On 30 January 2018, Council approved DA17/1199 described as 'External Building Alterations, Internal Fit-Out & Use of "Kentucky" Villa Heritage Item as a Café/Restaurant & Associated Signage'. Condition 5 of the Consent reads as follows:

5 The approved operating hours are from 6am am to 5pm Mondays to Sundays.

The proponents gained an Occupation Certificate, and the site is currently operating as per that approval. The operators now wish to extend the hours of operation. To maximise the opportunities for this venue, it is requested Condition 5 be re-worded to:

5 The approved operating hours are from 6am to 2am, Monday to Sunday.

Such hours, while maybe not being taken up in the first instance, will provide the flexibility needed for the business to grow. As will be detailed below, no unacceptable impacts would arise as a result of this modification.

No other amendments would be required for this Notice of Determination.

2. Section 4.55 - Modification of Consents Generally

Section 4.55 of the Act provides that a consent authority may, in certain circumstances, grant consent to an application that seeks to modify a development consent. In this circumstance, the minor nature of the amendment and the minimal impacts that arise as a result, warrant the application being requested under 4.55(1A) as follows.

(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.

Each of the matters listed above are dealt with in turn:

- a) The proposed amendments to the hours of operation will not result in any negative environmental impact. No impacts are expected.
- b) The development would be substantially the same. Its use and building form are consistent with the original application. The development will continue to be consistent with what was described and approved in the original application.
- c) In our opinion the proposed amendment is so minor that we believe notification is not required in this instance.

Based on the discussion above the development proposal is appropriately defined as being of minimal environmental impact and is substantially the same development which enables Council to determine the application as a 4.55(1A) modification as proposed.

3. Section 4.15 - Evaluation – Statement of Environmental Effects

Section 4.15 of the Environmental Planning and Assessment Act 1979 contains matters that need to be considered for any development application. Section 4.15 reads:

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
 - (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), and
 - (iii) any development control plan, and
 - (iiia) 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
 - (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,
- (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,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

The development will continue to satisfy the consideration against Section 4.15 even after the amendment as:

- a) The amendment does not affect the proposal's compliance with Council's LEP.
- b) There are no Draft EPI's relating to the land.
- c) There are no planning agreements that apply to the land that directly impact this modification.
- d) There will be no change in any potential impacts arising as a result of the proposed amendment to the hours of operation.
- e) The site will continue to be suitable for the approved use after the amendments are made.
- f) The public interest will be improved given additional dining opportunities will arise as a result of the application.

4. Potential Acoustic Concerns

We would understand if Council held some concerns over the potential acoustic impacts associated with the proposed extended hours of operation. In this regard we undertook a GIPA search on the referral comments that were made in response to DA19/0763, which was recently approved by Council. We note the following comments that were provided by Councils Environmental Section at the time.

Noise impact

As advised during the pre-lodgement process, given the approved existing uses and the nature of the proposed uses, and proximity to sensitive receivers, formal acoustic assessment is not required.

There may be the potential for noise impacts associated with the plant and equipment, however, given the distance to the nearest sensitive receiver, this aspect can be addressed through conditions of consent.

The proposed outdoor dining spaces and children's play area also have the potential to cause noise impacts, however the dining areas appear to be generally covered in the plans which, together with the distances from receivers, will assist in mitigating noise impacts. No changes to operational hours are proposed, and the new restaurant tenancy will be subject to a new application.

Consideration could be given to restricting amplified live music within the precinct, to give added certainty of minimising potential noise impacts.

In the context of this proposed modification, we submit the same conclusion should be made, noting that:

- The closest sensitive receiver to the site would be some 201m away, which is a substantial distance. Noise generated by a restaurant would not be expected to travel such a distance.



- Amplified live music is not proposed, although a condition would not be opposed.
- Whilst the proposal does involve a change of use, we submit a request for an acoustic report is not warranted and would be unreasonable in the circumstances of the subject site.

We consider the proposed modification can be approved by Council based on the information provided in this application.

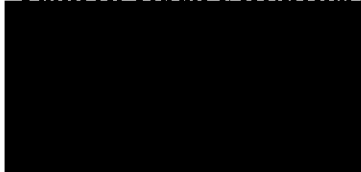
5. Summary

The amendments are considered minor in nature with no impact arising in relation to how the site will function or potentially impact on the locality. The additional hours of operation will allow for the business to grow and develop. There is no planning reason, technical or merit based that suggests the application cannot be approved. We therefore request Council's support of this application.

Please contact me on 0401 449 101 if you would like any further information.

Sincerely

Stimson Urban & Regional Planning



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Director

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