

Our Ref: 13.102

Your Ref: DA 15/0335

24 October 2018

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Dear Sir

**Re: DA 15/0335, 78-88 Tench Ave, Jamisontown**  
**Application under Section 4.55 (1A) of Environmental Planning and Assessment Act 1979**  
**Statement of Environmental Effects**

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.

DA15/0335 was approved by Council on 31 March 2016. That consent contained condition no 6 that reads:-

*The approved operating hours for the site are limited to 7.00am to 10.00pm, Monday to Sunday. Delivery and service vehicles generated by the development shall be limited to 7.00am to 5.00pm, Monday to Friday.*

Construction of the restaurant precinct is well underway, and tenants are currently being secured and finalised. However, the hours of operation approved in the consent are a significantly limiting factor for this development.

Accordingly, this modification seeks consent for the approved hours of operation to be extended to 7.00am to 1.00am Monday to Sunday. These hours of operation will provide flexibility in the offering to customers by each tenant. We note that separate DA's will be required for each tenancy and so Council will continue to have the opportunity to consider the potential impacts of each tenant in the future.

In support of this modification request, Rodney Stevens Acoustics was commissioned to assess the potential impacts of the extended trading. Background, operational, and vehicle acoustic parameters were considered in the assessment, in accordance with the NSW EPA Noise Policy for Industry guidelines. The following noise control recommendations have been made in the report;

- An electronic frequency dependant limiting device should be installed to the sound system to ensure that the amplified background music is set to the limit the background music to the levels set out Table 7-1 below. Ensure that speakers are arranged to face into the precinct and should not be facing out towards any resident.

Table 7-1 Background Music Limiting Levels

Resultant L10 Noise Level at 1 metre per Octave Band (dB)								Overall L <sub>A10</sub> dB(A)
63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	
83	88	83	83	81	74	66	62	85

- All external doors to have self-closing mechanisms. All external doors to be full acoustic perimeter seals for night time operation.
- Signs should also be posted at exit doors reminding patrons to leave the premises in an orderly and quiet manner when leaving the premises

Additional conditions of consent should be added to the consent, along with a reference to the Rodney Stevens Acoustic report.

#### 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:*

- it is satisfied that the proposed modification is of minimal environmental impact, and*
- 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*
- it has notified the application in accordance with:*
  - the regulations, if the regulations so require, or*
  - 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*
- 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:

- The amended operating hours when managed as per the recommendations, will not result in any environmental impacts. The amendment will allow the precinct to attract high quality tenants, providing flexibility in operating hours.

- b) No changes are proposed to the built form. The development would be 'substantially the same' as what was originally approved. Its use and operation will continue to be consistent with the original application.

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 Penrith City Council to determine the application in its current form.

#### **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:

- The amendment does not affect the proposal's compliance with Council's LEP.
- There are no Draft EPI's relating to the land.
- There are no planning agreements that apply to the land that directly impact this modification.
- There will be no change in any potential impacts arising as a result of the proposed change of hours. Mitigating measures have been recommended in the accompanying Acoustic Report
- The site will continue to be suitable for the approved use after the amendments are made.
- The public interest will not be diminished as a result of this application.

**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 amendments will ensure the most diverse range of tenants can be attracted to the site.

Council can therefore support the application in its current form.

Please contact me on 4731 2730 if you would like any further information.

Sincerely

**Stimson & Baker Planning**



**Warwick Stimson MPIA**  
Director