

MINUTES OF THE DEVELOPMENT & ENVIRONMENTAL SERVICES COMMITTEE OF UPPER HUNTER SHIRE COUNCIL HELD ON TUESDAY 11 AUGUST 2020 IN THE COUNCIL CHAMBERS COMMENCING AT 10.00am

PRESENT:

Cr Kiwa Fisher (Chair), Cr Sue Abbott, Cr Ron Campbell and Cr Lee Watts.

APOLOGIES:

Nil.

IN ATTENDANCE:

Mayor Maurice Collison, Cr James Burns, Mr Glenn Inglis (General Manager), Mr Mathew Pringle (Director Environmental & Community Services), Mr Paul Smith (Senior Environmental Planner), Rachel McNeil (KDC), Monique Younis (KDC), Janet Day (Public Member), Laura Conway (Administration Officer), Stevie Hayne (Administration Officer)

ADOPTION OF MINUTES:

The Committee adopted the minutes of the Development & Environmental Services Committee meeting held on 14 July 2020.

Moved: Cr Campbell

Seconded: Cr Fisher

CARRIED

DISCLOSURES OF INTEREST:

Nil.

PUBLIC PARTICIPATION:

Rachel McNeil from KDC.

SITE INSPECTIONS:

Nil.

BUSINESS ITEMS:

DESC.08.1 Development Application 50/2020 - Extension of Business Hours to 24 Hours – 22 Kelly Street, Scone

The Director Environmental & Community Services, Mr Mathew Pringle, gave a brief overview of the proposed development. The development application is being referred to the committee as nine submissions were received following public exhibition. Mr Pringle highlighted the main concerns being noise impacts, lighting, littering, anti-social behavior and vandalism. Mr Pringle highlighted the impact of noise from heavy vehicles on the highway, carpark area, car doors closing, talking, drive-through and stated that these issues were not considered adequately in the noise assessment.

Rachel McNeil from KDC spoke on behalf of the applicant and confirmed that they are seeking deferral of the application to give the applicant an opportunity to address the issues raised in the assessment report. Ms McNeil acknowledged the acoustic impact on the community and believes that the issues raised can be resolved.

Mr Pringle stated he is in support of deferral as well as Cr Campbell, Cr Fisher and Cr Watts. Cr Abbott is not in favour of deferral and supports the original recommendation of refusal.

COUNCILLOR QUESTIONS:

Nil.

Meeting closed at 10:10am.

Environmental & Community Services

REPORT/PROPOSAL

The development application proposes to extend the trading hours of the existing McDonalds restaurant to include the period 11.00pm to 6.00am and thereby create a 24 hours/7 days per week operation. Although the subject land is zoned B2 Local Centre the site directly adjoins R1 General Residential zoned areas and are established residential premises to the east, west, north and south.

The major concern for the 24-hours/7 days per week operation is the loss of amenity for surrounding residents between 11.00pm and 6.00pm. The applicant submitted a Noise Assessment (Muller Acoustic Consultant, January 2020) that concludes: *sleep disturbance is not anticipated, as emissions from impact noise are predicted to remain below the EPA Guideline for maximum noise level screening criteria.*

A review of the Noise Assessment identifies a number of deficiencies that may not give accurate account of the likely acoustic environment resulting from the extended trading hours. In the first instance the extended trading hours has the potential to attract heavy vehicles (semi-trailers, B-Doubles) travelling on the New England Highway. The McDonalds car park does not have capacity or parking space to accommodate such vehicles, resulting in them parking on the verges of Kelly Street. This could result in heavy vehicles parking within 20m to 40m of residences along this section of Kelly Street. No consideration is given to the noise generated from these trucks – engine, idling, refrigeration units, and truck drivers talking. Other deficiencies seem to include:

- The assessment does not adequately support its findings as it doesn't demonstrate how the predicted values have been derived at the receiver properties. It is noted that in relation to R11 (No. 19 Kelly Street) and R24 (No. 9 Eveleigh Court) the combined predicted noise level ($37\text{dB}_{\text{LAeq}(15\text{min})}$) is only just below the project noise trigger level (PNTL) ($38\text{dB}_{\text{LAeq}(15\text{min})}$).
- Does not consider noise sources from the carpark area of the property noise from customer's car doors slamming and customers talking which could be significant.
- The area to the south of the drive thru could be used for truck parking, there is one shown in the aerial view. Access in for these vehicles is very close to the residences at the rear of the property. If this occurs at night, the noise impacts on these residents could be significant.
- The experience of some residents suggests that from their residences there is already noise generated by the drive-thru and from cars "revving and accelerating".

OPTIONS

1. That Council refuse Development Application No. 50/2020 for the extension of business hours to 24 hours at 22 Kelly Street Scone (Lot 2 DP 1145990) for the reasons given in Attachment 1.
2. That Council approve Development Application No. 50/2020 for the extension of business hours to be 24 hours at 22 Kelly Street Scone (Lot 2 DP 1145990).
3. That Council defer making a determination pending a peer review of the Acoustic Assessment.

CONSULTATION

Environmental & Community Services

Surrounding properties were notified of the development application between 6 May 2020 and 20 May 2020. An advertisement was placed in the Newcastle Herald on 6 May 2020.

Nine (9) submissions were received with the main issues summarised in Attachment 2. Copies of the actual submissions are provided in Attachment 3.

STRATEGIC LINKS

a. Community Strategic Plan 2027

This report links to the Community Strategic Plan 2027 as follows:

Goal 2 Promote wellbeing and a connected, healthy and happy Community.

Goal 5 A sustainable and prosperous economy

We are working to achieve the following Community Priorities:



Rural lifestyle and Country feel are valued and protected and the Upper Hunter Shire remains quiet, safe, healthy and welcoming.



A stronger economic base to attract and retain residents, particularly our young people.

b. Delivery Program

Provide efficient and effective advisory, assessment and regulatory services focused on being Customer 'friendly', responsive and environmentally responsible

c. Other Plans

NA

IMPLICATIONS

a. Policy and Procedural Implications

NA

b. Financial Implications

Development application fees of \$245.00 have been paid.

c. Legislative Implications

An assessment of the development application has been undertaken pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979 (see Attachment 2).



Environmental & Community Services

d. Risk Implications

Council determinations of development applications and modifications in relation to local development can be appealed by a third party in the Land and Environment Court in circumstances where incorrect legal process has been applied. In the case of this development application the relevant considerations under the Environmental Planning and Assessment Act 1979 have been made. There is a low risk of any third party legal appeal in relation to this application. There is a moderate risk that the applicant may appeal a determination of refusal.

e. Sustainability Implications

NA

f. Other Implications

NA

CONCLUSION

The application has been assessed as unsatisfactory against Section 4.15 of the Environmental Planning and Assessment Act 1979. While the proposed 24 hour /7 days per week operation is not inconsistent with the B2 Local Centre zone objectives of the Upper Hunter Local Environmental Plan 2013, given the close proximity to surrounding residential land uses the proposal is likely to have significant adverse impacts on the amenity of residents.

It is therefore recommended that the development application be refused. The reasons for this recommendation are:

- The proposal has been assessed as unsatisfactory against Section 4.15 of the Environmental Planning & Assessment Act 1979
- The proposal is likely to have an adverse impact on the surrounding locality.
- The site is not suitable for the 24 hour /7 days per week operation
- Nine submissions have been received from residents raising concerns how their level of amenity will be adversely affected by the proposed 24 hour /7 days per week operation.



Environmental & Community Services

RECOMMENDATION

That Council defer Development Application No. 50/2020 for the extension of business hours to 24 hours at 22 Kelly Street Scone (Lot 2 DP 1145990)

Moved: Cr Watts

Seconded: Cr Fisher

CARRIED

The **DIVISION** was taken and the names of the Councillors voting FOR and AGAINST were as follows:

FOR	AGAINST
Councillor Campbell	Councillor Abbott
Councillor Fisher	
Councillor Watts	
Total (3)	Total (1)