



SEASIDE PLANNING

PROFESSIONAL CONSULTING SERVICE

Section 4.55(2) Modification of Consent

Truck Depot

Lot 1 DP 595191

81 Two Mile Creek Road Coopernook NSW 2426

November 2023

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1. Introduction

This section 4.55(2) Modification seeks to extend the operating hours of the existing approved truck depot at Lot 1 DP 595191, 81 Two Mile Creek Road, Coopernook.

The approved development, 10/2017/DA, was local development and subject to assessment under Part 4 of the Environmental Planning & Assessment Act 1979. This modification is enacted under section 4.55 (2) *application to modify a development consent*. Pursuant to Section 4.55(3), this report also considers relevant matters listed in Section 4.15(1) that are relevant to this application. In reviewing the approved plans and the impact of the change, the proposed modification will result in substantially the same development as that which was approved.

The proposed changes can be assessed pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979.

1.1 Proposed Modification

The proposed modification is to amend **Condition 43** of the development consent to read as follows:

Current Condition:

- 43.** For the purposes of preserving the amenity of neighbouring occupants and residents, hours of operation are restricted to between:
- a. 7.00am and 6.00pm Monday to Friday.
 - b. 8.00am and 4.00pm Saturdays

Modified Condition:

- 43.** For the purposes of preserving the amenity of neighbouring occupants and residents, hours of operation are restricted to between:
- a. 5:30am and 7.00pm Monday to Friday.
 - b. 8.00am and 4.00pm Saturdays

The proposed modification does not include any alteration to the daily onsite operation of the truck depot; does not involve any physical alteration to the approved site layout or increase to the number of truck movements through the operational hours of the day.

The Stamped Site Layout Plan, uploaded to the NSW Planning Portal, accompanies this application and shows the extent of the site as it is to which the hours apply. This application

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seeks to extend the operating hours by 2.5 hrs in the AM Monday to Friday. (noting the approved operating time is currently conditioned from 7:00am to 6.00pm).

Reason for application:

The reason for this application is allow the business to operate in a capacity that is suitable for the industry. JAE Earthmoving Pty Ltd currently undertake a large scope of works within the Mid North Coast, including, but not limited to, large scale civil projects, bulk earthworks, contractual work with Council, subdivision site works.

Truck Depot as defined in the Greater Taree Local Environment Plan 2010 as follows:

truck depot means a building or place used for the servicing and parking of trucks, earthmoving machinery and the like.

The approved depot located at *81 Two Mile Creek Road Coopernook* is predominantly used for the parking of vehicles prior to departing to attend contractual work offsite, approximately 2 to 3 hours travel from the depot. The change to the approved operating hours will not increase the number of vehicles entering or exiting the site, however it will allow travel to site earlier and assist in alleviating cumulative impacts across the industry.

Additionally, the current operational use of the site, until recently, was in keeping with the results contained within the acoustic report prepared by Phillip Thornton of Matrix Industries in September 2016 (appendix 2), which was assessed under the provision that the hours of operation would be 6.00am to 6.00pm Monday to Saturday. Unfortunately, this is inconsistent with condition 43 of the Notice of Determination 10/2017/DA, which provides that operating times were limited to 7.00am to 6.00pm.

MidCoast Council compliance officers attended the site and issuing a NOTICE OF INTENTION TO GIVE AN ORDER Pursuant to Division 9.3 of the Environmental Planning and Assessment Act, 1979 (NSW) to stop use of the site outside the conditioned times, until such time as this modification is favourably approved.

1.2 Site Context

The property is described as 81 Two Mile Creek Road Coopernook, Lot 1 DP 595191. The site currently contains the approved Truck Depot and associated structures and Machinery. (as shown in the Site Layout Plan – Appendix 1).

The photo below show the site in the context of the locality.



2. Planning Considerations

2.1 Provisions of the Act and regulations

The Section 4.55(2) of the Environmental Planning & Assessment Act 1979 states:

(2) Other modifications. 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all),

Clause 115 of the Environmental Planning and Assessment Regulation 2021 establishes several requirements relevant to this application (not all clauses included below):

(1) An application for modification of a development consent under section 4.55(1), (1A) or

(2) or 4.56 (1) of the Act must contain the following information: (d) a description of the proposed modification to the development consent, (e) a statement that indicates either:

(i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or

- (ii) that the modification is intended to have some other effect, as specified in the statement,
- (f) a description of the expected impacts of the modification,
- (g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved

The following legal background demonstrates that this application: (1) can be determined via a Section 4.55 modification. This information supports the fact that this application is substantially the same development as approved can be determined via a Section 4.55 modification.

Modifications can be determined under Section 4.55(1A) or (2). A modification pursuant Section 4.55(1A) is to be of “minor” impact. Minor is a subjective judgment however can be construed as meaning negligible or insignificant. The Court has determined that modifications have nothing to do with the extent of changes but rather, the extent of impact. In comparison, Section 4.55(2) is reserved for “Other Modifications” which, by inference, can have a greater level of impact beyond what is considered as “minimal”.

This proposed modification will make no changes to the overall appearance of the premises and there is no change to the use of the premises. Given there is an increase in the hours of operation, this modification is lodged pursuant to Section 4.55(2).

2.2 Provision of relevant Environmental Planning Instruments (State)

Section 4.15(a)(i) requires the consideration of all relevant Environmental Planning Instruments at the Development Application Stage.

No State Environmental Planning policies are applicable to this modification. No further consideration necessary, as the site is an established **Truck Depot** with existing approvals. No building or site works are proposed.

2.3 Local Environmental Plan

The **Greater Taree Local Environmental Plan (LEP) 2010** applies to the site.

The site is **RUI – Primary Production**.

The objectives of the zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

- To permit small scale rural tourism uses associated with primary production and environmental conservation with minimal impact on primary production and the scenic amenity of the area.
- To maintain the rural landscape character of the land.
- To protect and enhance the native flora, fauna and biodiversity links.
- To secure a future for agriculture in the area by minimising the fragmentation of rural land and loss of potential agricultural productivity.

***truck depot** means a building or place used for the servicing and parking of trucks, earthmoving machinery and the like.*

Consent for the Truck Depot was granted on 12 April 2017 but MidCoast Council – Taree Branch and the use has continued since the date of approval.

The proposed changes to the hours of operation result in no material difference to the natural environment or the locality. There is no expansion in to the operation land area. No demolition works are proposed and no heritage or environmental issues are present on site.

2.4 Draft Environmental planning Instruments

Section 4.15 (1)(a)(ii) requires Council to consider the Provisions of relevant Draft Environmental Planning Instruments (EPIs).

There are no draft Planning Instruments relevant to the proposed development

2.5 Development Control Plans

Section 4.15 (1)(a)(iii) of the Act requires the consideration of Council's DCPs.

The Greater Taree Development Control Plan 2010 applies to the site, however there are no provisions for Truck Depots specifically relevant to the proposed modification. There are no changes to the property that will have any impact on the Environment or Services.

There is no intensification of the use in terms of capacity and no change to design. The increase in hours is generally limited to the daytime.

There will be a slight modification to the traffic time during the morning hours, however this will not increase the intensity on the site. The road is adequate in its capacity to accommodate daytime movements to and from the site.

There are no other DCP provisions that impact this proposed modification.

3. Impact assessment and suitability of the site

Guidelines for assessing Section 4.55 modifications state that council must:

- Consider the impacts of the original development as if they were occurring at the time the modification application is determined.
- Compare the likely impacts of the proposed modified development, including the environmental, social and economic impacts, with the impacts of the original development.

Since the original approval, there have been no major changes to the natural or built environment that were envisaged around the site that warrant consideration as part of this proposed modification.

The proposed modification seeks to:

- Increase the hours operation, as set out in this proposal.

Section 4.15(1)(b) requires consideration of the likely impact of the development. The impacts have been quantified and an analysis of the potential impacts is summarised under the headings below.

3.1 Context and setting

No building works are proposed. There are no significant changes that will impact adjoining sites, as outlined in the acoustic report prepared by Matrix Industries (September 2016) which assessed the proposed development within the hours of the proposed modification. Traffic and noise are discussed in the respective sections within the accompanying acoustic report.

Increased traffic during the 5:30 to 7.00am and after 6.00pm to 7.00pm windows will have a minor impact, but was found to be within the suitable acceptable levels outlined by the INP. Furthermore, the daily operation has been since 6:00am and to 7.00pm for several years, inconsistent with the approved conditions of consent. In this regard any new impact arising from daytime operation of the truck depot is negligible.

3.2 Access and Parking

A single point of access still remains to the property. The additional hours will result in some minor increase in car movements as patrons arrive and leave in the morning hours.

The additional hours are in line with the previous operation use of the site and is at a time of very low traffic volumes. The impact on adjoining properties is minor and the use is long-established. There are no significant impacts in this regard.

3.3 Impact on Services and Environment

No significant impact on the natural environment.

The proposed hours will bring the daytime hours of operation into line with the previously hours of operation. The justification provided within this report has comprehensively outlined the existing amenity of the locality and demonstrated consistency. Existing conditions of consent provide mechanisms to manage noise from the business operation.

An acoustic assessment has been prepared and is attached at Appendix 2. The report notes that the use trucks between 5.00am and 7.00am, will be within the mandated EPA limits and in line with provisions outlined in the INP.

Additionally, The property is located in proximity to the Pacific Highway, which as outlined in the accompanying acoustic report, provides a higher rate of background noise than the operational use of the depot. The main changes to the hours are to allow for vehicles to leave the site and travel to the contractual locations to carry out the operational work.

Noise impacts are in line with the current operation and the proposed new hours are acceptable in the context.

3.4 Safety, Security & Crime Prevention; Social impact in the locality; Impact in the locality.

No adverse impacts are expected from the increase in hours. The operations onsite will not increase, however the proposed changes purely result in the vehicles to leave the site to travel to the required operational locations. The daily activities onsite will remain unchanged.

Socially and economically, the additional operating hours are a sign of the increased development across the Mid North Coast and the requirements for the vehicles to be on site for civil and construction works is reflective of the industry time frames, therefore, limiting the operational time is not feasible in the current development climate. Overall, the impact in this regard is positive and meets the needs of local residents and businesses in the local economy.

An acoustic report was carried out which included an assessment of the extended hours and found specifically that trucks leaving the site during the “*shoulder*” period of 5.00am to 7.00am generated noise levels that were considered acceptable with respect to the nearest residence.

The result showed that the noise levels from *Jim Anderson Earthmoving* will be below the level in the INP for the daytimes, shoulder and evening periods. The results were valid for all neighbours. The conclusion continues to discuss that the regular activities of the truck depot and workshop are within the within the government guidelines the boundary of the nearest potentially affected residence.

Overall, on this basis the extended operating hours will produce a net community benefit, by allowing the vehicles to exit the site and arrive at the contractual site locations to commence work at a time more consistent with the onsite commencement of the construction location.

3.5 Site design and internal design

No change proposed. The site was granted approval under 10/2017/DA for use of a *truck depot* pursuant to the definition within the Greater Taree Local Environmental Plan 2010.

3.6 Construction; Cumulative Impacts

No cumulative impacts. The proposed modification does not include an alteration to the building or structures onsite. There are no proposed works to be carried out onsite. The existing access is suitable to cater for the existing vehicles to enter and exit the site in a suitable manner and the

4. Suitability of the site.

Section 4.15(1)(c) requires consideration of the suitability of the site.

4.1 Proposal fits in the locality

The proposed development seeks a modification to the existing approved use onsite and proposal remains conducive to the locality.

4.2 Site attributes conducive to development

The site is remote to higher density housing and is appropriate to the existing use and any minor noise impacts are naturally mitigated.

4.3 Modification to Conditions of Approval or Consent.

No changes are required to the main operational conditions of the consent.

Existing Condition No. 43 would need to be amended with the following condition:

- 43.** For the purposes of preserving the amenity of neighbouring occupants and residents, hours of operation are restricted to between:
- a. 5:30am and 7.00pm Monday to Friday.
 - b. 8.00am and 4.00pm Saturdays

5. Conclusion

The modification seeks to amend the hours of operation conditioned within consent 10/2017/DA, to be consistent with the previous and ongoing operating of the site in recent times.

The main change to the current approval is to begin operating at 5.30am instead of 7.00am and until 7.00pm (and as per operating hours outlined within the acoustic assessment.) The impact of the proposed operation on the amenity of the locality is now understood and quantifiable. The modification to operating hours can be supported within the known performance and impact of the overall operation. This is supported by the acoustic report attached. It is demonstrated that there are no unacceptable impacts that result from the modification.