



Ian Woodard
City of Canterbury-Bankstown Council
PO Box 8
Bankstown NSW 1885

Via email: ian.woodward@cbc.city.nsw.gov.au, alice.pettini@cbc.city.nsw.gov.au

Attention: Alice Pettini – Acting Team Leader Planning (East)

Dear Alice

Section 4.56 Application to modify DA-826/2020 – 149-163 Milton Street, Ashbury

1. INTRODUCTION

This letter has been prepared by Ashbury Projects Pty Ltd (the **applicant**) and is submitted to Canterbury-Bankstown Council (**Council**) to support a section 4.56 application to modify DA-826/2020 at 149-163 Milton Street, Ashbury (the **site**).

It has been prepared in accordance with the *Environmental Planning and Assessment Act 1979 (EP&A Act)* and *Environmental Planning and Assessment Regulations 2021* (the **Regulations**) and should be read in conjunction with the following:

- **Attachment A** – Acoustic Statement by Pulse White Noise Acoustics dated 4 November 2024.
- **Attachment B** – Structural Statement by ABC Structural & Civil Engineers dated 14 November 2024.

The modification seeks amendment to condition 4.2 to allow concrete pour activities to be undertaken outside of normal permitted development consent construction hours to allow for the pouring and finishing of large concrete slabs to all buildings. This activity would be undertaken on separate occurrences between Monday and Friday from 6:30am to 8:00pm.

2. SITE DESCRIPTION

A summary of the site and surrounding context is provided in **Table 1**.



Figure 1 – Site aerial (Source: SIX Maps)

Table 1 – Site Description

| Element | Description |
|------------------------|--|
| Property Address | 149-153 Milton Street, Ashbury |
| Lot and Deposited Plan | Lot B and C in DP 30778 |
| Area | 16,220m ² |
| Access | Access is provided via Milton Street |
| Site features | The site has been historically used for industrial purposes, however, is currently under construction to support a residential development subject of DA-826/2020 and referred to as Stage 2 of the Ashbury Estate. State 1, south of Stage 2, is under construction for a combination of townhouses and residential apartment buildings. |
| Surrounding context | The site is surrounded by single and two storey detached dwellings along Milton Street and to the north. W H Wagner Oval is located to the west. The site has only one boundary with two residential dwellings. The remainder is encompassed by a site under construction (Stage 2), W H Wagner Oval and Milton Street. |

3. APPROVAL HISTORY

A summary of the sites approval history is outlined in **Table 2**.

Table 2 – Approval History

| DA | Description | Approval Date |
|---------------|--|------------------|
| DA-826-2020 | Demolition of all structures, removal of 50 trees, excavation, site remediation, civil works, new road, site landscaping and construction of 8 residential buildings including 127 dwellings over a single level common basement for parking | 23 November 2021 |
| DA-826-2020-B | Internal and external alterations including increased floor to floor heights, lift overrun and overall increased building height, amended window layout and design, changes to unit configuration, increase in GFA, delete voids and installation of additional fire stairs to basement. | 14 June 2024 |
| DA-826-2020-C | Design modifications, including to the communal open space, building envelope for Building C, basement changes and façade amendments. | Under assessment |
| DA-826-2020-D | Address a minor error in relation to Condition 1.17 and the identified building heights. | 26 June 2024 |
| DA-826-2020-E | Remove Tree 6 (Brushbox) from the northern boundary and Tree 17 (Lilly Pilly) & Tree 33 (Spotted Gum) from the western boundary and modify conditions 1.9 and 2.4 to reflect their removal [Section 4.56] | Under assessment |

4. PROPOSED MODIFICATION

This section 4.56 modification proposes amendments to condition 4.2 relating to construction hours of DA-926-2020 (as modified). It seeks approval for concrete pour activities to be undertaken outside of normal permitted development consent construction hours to allow for the pouring and finishing of large concrete slabs to all buildings.

The construction hours approved under condition 4.2 are as follows:

- Monday to Saturday: 7:00am to 5:00pm, and
- Sunday or public holidays: No construction.

It is proposed to amend condition 4.2 as follows:

- Monday to Saturday: 7:00am to 5:00pm (unchanged),
- Monday to Saturday on separate occurrences for concrete pumping and finishing activities: 6:30am to 8:00pm for a 6-month period (proposed), and
- Sundays or public holidays: No construction (unchanged).

The proposed works are necessary to facilitate the pouring of the large structurally critical slabs to be completed. The works that would be undertaken within the separate occurrence period include:

- Placing of concrete with mobile/tower placing boom,
- Delivery of concrete via concrete agitators,
- Finishing of concrete via trowel/helicopter,
- Cleaning of pump, and
- Clearing of washout tray and removal of finishing equipment via crane.



The proposed works do not require changes to previously established construction management practices on site implemented post approval, and do not give rise to additional staff on site or vehicular movements.

Amendments to Conditions of Consent

The proposed modifications are shown by ~~strikethrough~~ for deleted text and **bold** for new text.

4.2 The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:

a. 7.00 am and 5.00 pm on Monday to Saturday.

b. 6:30am and 8:00pm on Monday to Saturday for separate concrete pumping and finishing activities for a 6-months period.

~~bc.~~ No construction is to be carried out at any time on a Sunday or a public holiday.

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Note: Any variation to the hours of work requires Council's approval.

5. REASONS FOR MODIFICATION

The pouring of concrete involves several activities that need to be undertaken in one process for each floor of the development including placing of concrete with placing boom to removal of equipment via a crane.

The extended hours is required in order to build the slabs in accordance with Australian Standards (AS), the Building Code of Australia (BCA) and structural engineers designs and in effect to construct structurally sound buildings.

Critically, the concrete pumping activities (noise generating activity) will only occur up to 6:00pm and generally within the approved construction hours. The remainder of the extension of time sought up until 8:00pm is for pack up, wash down and trowelling/finishing of concrete activities. This is anticipated to have minimal environmental impact on surrounding properties.

This proposal does not facilitate early completion of work but is only due to the excessive volume of concrete required and lengthy process involved to allow for the pumping and placement and finish of concrete to satisfy structural engineer's design.

6. SUBSTANTIALLY THE SAME DEVELOPMENT

The proposed modifications have been assessed in accordance with section 4.56 of the EP&A Act.

Section 4.56 of the EP&A Act states that

(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development 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 the consent was originally granted and before that consent as originally granted was modified (if at all)...*



(emphasis added)

The development, as proposed to be modified, is substantially the same development as that originally approved in that it:

- The proposed development retains the same use as the approved development and in this respect, there is no material change in the essence of the development,
- The proposed modifications will result in substantially the same development as originally approved under DA-826-2020 (as modified). The proposed modification does not have any impact on the nature of the approved development, bulk, scale, design of the approved buildings, and
- The environmental impacts of the modified development are substantially the same as the approved development.

The proposed modifications result only in changes to construction hours and there are no physical or material changes to the approved development.

The modification is required to the excessive volume of concrete required and lengthy process involved to allow for the pumping and placement and finish of concrete. The proposed changes are minor in nature and will remain consistent with the parent approval.

Based on the above, the proposed modifications can be assessed in accordance with section 4.56 of the EP&A Act.

7. PLANNING ASSESSMENT

Environmental Planning Instruments

The modification does not give rise to any new non-compliances with *Canterbury-Bankstown Local Environmental Plan 2023* (CBLEP 2023).

Draft Environmental Planning Instruments

The modification does not give rise to any new considerations or compliance matters under a draft EPI.

Development Control Plan

The modification does not give rise to any inconsistencies with *Canterbury-Bankstown Development Control Plan 2023* (CBDPC 2023).

Planning Agreement

The modification is not affected by a planning agreement.

Regulations

The proposed modification (development application) has been made in accordance with the requirements contained in Division 1 of the *Environmental Planning and Assessment Regulation 2021* (the Regulation).

Likely Impacts

Noise

It is anticipated the extension of construction hours on separate occasions may result in light construction noise emanating from the site to surrounding residential receivers. However, the programming of works has



been structured in a way to minimise potential noise impacts.

All construction noise associated with the pumping of concrete has been programmed to occur between regular/acceptable construction hours of 6:30am to 6:00pm. Activities such as the set up and shutdown of pumps, relocation, wash down and pack up has been programmed for the out of hours request subject of the extended hours (6.30-8:00am and 6:00-8:00pm).

In essence, there is:

- An additional 30 minutes in the morning for set up (proposing 6:30am, currently approved at 7:00am), and
- An additional hour for pumping the concrete (proposing 6:00pm, currently approved at 5:00pm), and
- An additional two hours for shutdown and pack up to 8:00pm.

The finishing of the concrete surface using pole trowels and helicopters will occur between 3:00pm to 8:00pm. We note a helicopter is a piece of light construction equipment used to mechanically seal and finish the concrete slab, essential in the slabs curing process.

Overall, the potential impact of noise as a result of the increased operating hours at prescribed periods will not result in an unreasonable impact on the surrounding locality. This is reinforced by mitigation measures that MN Builders will continue to enforce on site to minimise impacts.

There will be no additional truck movements beyond 6:00pm. Skeleton staff will remain on for pack up, wash down and trowelling/finishing of concrete activities.

Mitigation Measures

MN Builders has utilised mitigation measures in the programming of the necessary activities, and these will continue to be implemented during the proposed extended hours, including:

- Dividing the structural elements of each building into multiple pours, resulting in smaller concrete pours,
- Scheduling noisy works within normal authorised hours,
- Will ensure that any lights on the job site that are operated during the extended working hours are kept to a minimum and do not interfere with the residents in the surrounding areas,
- Formal discussions with project team members and their staff will be had to ensure noise is kept to an acceptable level during the evenings,
- Take 'feasible' and 'reasonable' work practice measures to minimise noise,
- The parking of vehicles away from residents, leaving the number of workers on site to an absolute minimum, leaving all man essential activity to the following morning, and
- The extended construction hours on these occurrences are essential to deliver a structurally adequate slabs as per engineers designs.

Acoustic Assessment

The modification is supported by an acoustic statement prepared by PWNA, which reviews the potential construction noise impacts arising from the proposal. The statement outlines potential recommendation strategies including maximising distance from neighbours when undertaking works outside the standard working hours of 7:00am to 5:00pm and providing acoustic screening to the north.

Based on the proposed works to be undertaken as part of the concrete finishing at the site and the proposed management and mitigations detailed. the resulting noise levels outside of the approved working hours will be acoustically acceptable and will not result in unacceptable noise levels.

Site Suitability



The site has been previously determined by Council as being suitable for development as part of DA-826-2020. The proposed modification does not change the suitability of the site of the approved development.

Submissions

Submissions will be considered as part of the development assessment process at the close of the notification period, if relevant.

Public Interest

The proposed amendment to condition 4.2 is not considered to result in any adverse impacts to surrounding properties. The development as modified will remain consistent with the approved built-form and land use outcome set under DA-826-2020.

- There are additional benefits in approval the modification including:
- Structure to be poured correctly as per engineers designs to allow for a structurally sound slab, and
- Reduced overall duration of construction impacts.

Therefore, it is considered that the proposed modification to condition 4.2 will have no detrimental effect on the public interest.

8. CONCLUSION

The proposed modifications have been assessed in accordance with section 4.56 and section 4.15 of the EP&A Act and are considered appropriate as summarised below:

- The proposed modifications do not impact the permissibility of the development within the CBLEP 2023.
- The proposed modifications are minor in nature and will result in minimal amenity and environmental impacts to adjoining properties, which can be managed and mitigated by ongoing construction strategies,
- The development remains substantially the same as that to which the consent was originally granted.

We submit that the proposed modifications are appropriate for the site and approval is recommended. Do not hesitate to contact me should you have any questions regarding our application.

Yours sincerely,

Jordan Faeghi
Planning Manager