

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0933
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 1 DP 570451, 164 Warringah Road BEACON HILL NSW 2100 Lot 1 DP 575638, 164 Warringah Road BEACON HILL NSW 2100
Proposed Development:	Use of premises as an existing approved restaurant with extended hours of operation
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Mcdonald's Australia Limited
Applicant:	Mcdonald's Australia Limited

Application Lodged:	18/08/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	26/08/2020 to 09/09/2020
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
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Executive Summary

The Development Application seeks an extension of trading hours of an existing McDonald's restaurant to 24 hours, 7 days a week.

The site is located at 164 Warringah Road, Beacon Hill, at the intersection of Warringah Road, Willandra Road and Cornish Avenue and has an approximate area of 2,562m². An existing McDonald's

operation with dual lane drive-thru, on-site car parking and landscaping currently occupies the site.

The subject site is zoned R2 - Low Density Residential with the current use (Food and Drink Premises) being a prohibited land use within the zoning, however the use benefits from existing use rights. No changes are proposed to existing building, structures, seating capacity or car parking. Therefore, the built form controls and considerations of size, bulk and scale are not applicable to the proposal.

Five (5) submissions were received as result of the notification. The issues raised relate to noise impacts, safety and security, and loss of residential amenity. The concerns raised within the submissions have been considered and as result it is recommended that the application be approved on the basis of 24 month trial period, which is reflected in the draft conditions.

The reasoning for the recommendation is based on the fact that Beacon Hill McDonald's is already trading 24 hours (since 16 July 2020), under the Environmental Planning and Assessment (Covid-19 Development- Extended Operation) Order 2020. The EPA Order 2020 has enabled an informal 24/7 trade trial period for the Beacon Hill McDonald's operation to occur over a two (2) month period. Furthermore, the Beacon Hill McDonald's is adjacent to another commercial premises.

The Caltex service station and associated convenience store (adjoining site to the west) operates under the approved trading hours of 24 hours/7 days a week under Mod2016/0060, hence there is precedent for after hours commercial uses in the area.

Accordingly, this report recommends that consent be granted to this application, subject to a 24 month trial period.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent the extension of trading hours. This development application seeks 24 hour 7 days a week operation for the existing use, including the internal operation and drive-thru operation.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Development Control Plan - D3 Noise

SITE DESCRIPTION

Property Description:	Lot 1 DP 570451 , 164 Warringah Road BEACON HILL NSW 2100 Lot 1 DP 575638 , 164 Warringah Road BEACON HILL NSW 2100
Detailed Site Description:	The subject allotment is located in a unique position with a frontage to three streets and sharing an 'island' between the roads with one other site. Surrounding the sites are the following streets with frontages of: North - Cornish Avenue - 45.765m South - Warringah Road - 44.835m East - Willandra Road - 39.0m West - Caltex Service Station - 41.795m Further to the east of the allotment is a large portion of land zoned RE1 Public Recreation and consists of bushland and playing fields. Surrounding the allotment in all other directions are detached residential dwellings on land zoned R2 Low Density Residential. The site has a surveyed area of 2562m² and is on land zoned R2 Low Density Residential. Given that the site currently operates as a McDonald's Restaurant, the site is reliant upon existing use rights, as discussed elsewhere in this report. Presently the site accommodates an open-air at-grade car park with a drive-thru facility, and a single storey restaurant with indoor and outdoor seating, cooking facilities, a cafe and a playground. The site is generally flat and has a landscaped perimeter along all boundaries, with a significant tree present on the north-eastern corner of the site at the Willandra Road and Cornish Avenue intersection.

Map:



SITE HISTORY

Development Application No. 1994/0437 for the construction of a McDonald's Restaurant, associated carparking and landscaping was refused by Council on 14 December 1994. The proposal was subsequently appealed to the the Land and Environment Court in proceeding No. 10758 of 1995 and was approved on 20 February 1996.

Development Application No. 2005/0592 for the construction of a play area. This development was approved by the Application Determination Panel on 24 January 2006.

Development Application No. 2007/0137 for a customer display order unit, menu boards and awning for the drive thru was approved under delegation on 21 May 2007.

Development Application No. 2008/0652 for alterations and additions to the restaurant including widening the drive thru access was lodged with Council. The application was subsequently rejected on 14 May 2012 pursuant to Clause 51 of the Environmental Planning and Assessment Regulation 2000 (the 'EPA Regs 2000') as the application failed to submit a Geotechnical Report, a Survey Plan or a Bushfire Report.

Development Application No. 2012/0978 for alterations and additions to the restaurant to widen the drive thru access was lodged with Council. The application was determined under delegation on 05 October 2012.

A review of the history of the site and previous application has revealed that the operating hours for the site was included as condition 52 within the original development consent, which stipulates as follows:

Condition 52

The development shall operate as follows -

(a) The opening and closing hours of the development for the supply or consumption of products being confined to 6.00am to 10.30pm Sunday, Monday, Tuesday, Wednesday and Thursday and 6.00am to 12.00 midnight Friday, Saturday and Public Holidays.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for McDonald purposes for an extended period of time. The proposed development retains the use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). T This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development,	(i) Environmental Impact The environmental impacts of the proposed development on the

Section 4.15 Matters for Consideration'	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?

Section 4.65 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would have the effect of prohibiting that use?

Comment:

Council has obtained evidence in the form of a Land and Environment Court Consent (Appeal 10758 of

1995 for DA1994/0437) which reveals that the use of the building commenced as a lawful purpose prior to the coming into force of the Warringah Local Environment Plan 2011 on 9 December 2011.

2. Was the use of the building / work / land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building was lawfully approved by the Land and Environment Court on 20 February 1996, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

Previous development applications for this site have addressed this matter, however upon review, referenced building consents could not be located. From historical imagery and reliance upon Council's previous assessments, it is considered that the use of the building has been carried out within one year after the date of consent.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that a part of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was not used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The subject site is unique in that it benefits from having three street frontages to Warringah Road, Willandra Road and Cornish Avenue. West of the site is a Caltex Service Station. The service station and subject restaurant are on an island-type allotment surrounding by roads. Given the unique location of the site and that the development is only single storey, it is considered that the development existing relates positively to that of the surrounding R2 Low Density Residential area.

Furthermore, the scale, setback, bulk and height of the existing building will remain unchanged.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The proposal relates to extended hours of operation and does not seek any physical works. However, the intensity of use will change by the extension of operating hours allowing customers to access the site and purchase/consume food products 24 hours per day, 7 days per week. This raises the principle issue of potential noise disturbance associated with the operations and customer activity. The site is within a low density residential area and existing use rights are considered in the context of likely activity, noise, security, deliveries, customer vehicles, and whether the same level of activity during the day should be permitted throughout the night and early morning. In this case, it is recommended that the extended trading hours only be permitted for a 24 month trial period.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

It is considered that based on a trial period of 24 months, the extended trading hours will not cause any unreasonable or detrimental impacts to surrounding developments given the prolonged and continued use of the site as a drive-through food premises. In addition, it is noted that the premises is currently trading 24/7 under the Environmental Planning and Assessment (Covid-19 Development- Extended Operation) Order 2020.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again,

numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

Given the reasons listed above and elsewhere in this report, it is considered that the amenity impacts caused by this development are not unreasonably dissimilar to the other development generally.

Conclusion

The use has been approved under a previous EPI (Warringah LEP 1985) and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (WLEP 2011).

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/08/2020 to 09/09/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Nathan Fullbrook	30 Willandra Road BEACON HILL NSW 2100
Ms Penelope Gae Cross	26 Willandra Road BEACON HILL NSW 2100
Rexford John Carlson	195 Warringah Road BEACON HILL NSW 2100
Jeanette Horstead	193 Warringah Road BEACON HILL NSW 2100
Ms Kathryn Louise Rinaldo	2 / 6 Jackson Street BALGOWLAH NSW 2093

The matters raised within the submissions are addressed as follows:

- **Acoustic Impact**

The main concern in the submissions received was in relation to noise impacts associated with late night trading. The applicant has submitted a Noise Assessment prepared by a noise consultant, Muller Acoustic Consulting, to address potential noise issues relating to 24 hour trading.

The acoustic impact is addressed in detail under the WDCP section of the report, where it is found that subject to a condition that restricts the business to a 24 month trial period, the acoustic impact is considered to be satisfactory.

- **Safety & Security and Littering**

Concerns have been raised regarding the safety and security, including crowd and anti-social

behaviours at the premises during late night trading.

The applicant has lodged a detailed Plan of Management (PoM) with the application, which provides details in relation to safety and security and how the crowd control is controlled and managed within the premises. In addition, it is noted that the outdoor areas are also well lit to encourage casual surveillance and minimise blind spots. The lights (in compliance with AS4282) will be projected directly onto the site, therefore minimising light spill and amenity impacts to adjacent properties whilst also improving CCTV and passive surveillance performance.

in relation to the issue of littering, the applicant has submitted a Waste Management Plan, which outlines the methodology for cleaning the existing McDonald's premise as well as clearing litter in the surrounding public domain.

Accordingly, this issue does not warrant the refusal of the application.

- **Traffic/Parking**

A number of submissions have raised issues associated with Traffic and Parking.

Council's Traffic Engineer has reviewed the proposal and has raised no objection to the proposal on traffic generation grounds. The proposal seeks to extend the operating hours of the Beacon Hill McDonald's to allow for late night and early morning trading but does not include an increase of seating or drive-thru capacity. These periods are generally aligned with significantly less traffic, and therefore any additional traffic which comes through the area during the late night is likely to be very light and such that it will not have an impact on safety.

There is adequate parking for staff and customers within the site. Accordingly, this issue does not warrant the refusal of the application.

- **Delivery Vehicles**

One (1) submission raised an issue with late night delivery vehicles at the site.

Waste deliveries and vehicles only occur between the hours of 7.00am to 10.00pm each day and this will not change with the proposed extension to the operating hours.

Accordingly, this issue does not warrant the refusal of the application.

- **Light Pollution**

Concern has been raised in relation to lighting impact at night.

The existing external lighting is located within the site boundary and the existing configuration presents the light downwards so as not to create light spill or nuisance upon nearby properties. The proposal does not seek any additional signage or external lighting, and existing signage and lighting is in accordance with Australian Standards and RMS Guidelines, the increased trading hours will not create significant additional impact upon adjoining properties via external lighting and signage.

Accordingly, this issue does not warrant the refusal of the application.

Odour

One (1) submission raised concerns over the proximity of the McDonald's operation to residential properties and the associated odour impacts as result of late trading.

The operation of the kitchen will continue to operate as existing and in accordance with the Food Standards Code and The Food Regulation 2004, and any relevant Council Codes.

Accordingly, this issue does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	General Comments Environmental Health has reviewed the acoustic report prepared by Muller Acoustic Consulting dated July 2020 ref MAC201079-01RP1 and it has been determined that sleep disturbance from the operation of the development will not be impacted. A review of past CRMs relating to the operation of McDonalds has not highlighted any ongoing problems relating to noise and odour. Recommendation APPROVAL - no conditions
Traffic Engineer	The proposal is for extension of hours of Beacon Hill McDonald's to allow 24-Hour trading, 7 days. The proposed modification will not result in any impact on the road network. Therefore, it can be supported on traffic grounds.

External Referral Body	Comments
NSW Police – Crime Prevention Office (Local Command matters)	The proposal was referred to NSW Police. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

Nil

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	No changes to building height	-	N/A

Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes

Detailed Assessment

Zone R2 Low Density Residential

The existing and proposed continuation of the site use is permitted as per Section 4.65 of the Environmental Planning and Assessment Act (1979) (EP&A Act) and is detailed in the *Existing Use Rights* section of this report.

Warringah Development Control Plan

Built Form Controls

The proposal relates to trading hours, therefore no changes are proposed to the compliance of the development with the built form controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D7 Views	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes

Detailed Assessment

D3 Noise

Merit Consideration

With regard to the consideration under this Clause, the development is considered against the underlying Objectives of the Control as follows:

To encourage innovative design solutions to improve the urban environment.

Comment:

The proposal involves an extension to the existing hours of operation to permit 24 hour trading/7 days per week. No physical changes to the premises is proposed or required. Subject to a condition limiting the trading hours to a 24 month trial period, the proposal is considered to satisfy this objective

To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.

Comment:

The Noise Assessment by Muller Acoustic Consulting has quantified potential operational emissions pertaining to customer generated noise and mechanical plant. The results of the acoustic report demonstrate that the operational noise emissions from the proposed extension of trading hours would satisfy relevant criteria at all assessed receivers. Noise modelling identified that customer noise emissions are predicted to satisfy the relevant sleep disturbance at all assessed receivers surrounding the site.

Having regard to the above assessment and subject to a 24 month trial period, it is concluded that the proposed development, subject to such conditions is consistent with the relevant objectives of WDCP and the objectives specified in section 1.3 of the Environmental Planning and Assessment Act, 1979.

Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

The proposal to extend the operating hours of the Beacon Hill McDonald's restaurant and drive-through to allow for 24/7 trade, is considered appropriate for the area based on the context of the site, surrounding areas and previous operational performance.

Importantly, it is recognised that the site is within the close proximity to residential dwellings to the north of the site, however the proposal has implemented and will implement mitigation measures through the Operational Management Plan to manage potential amenity impacts.

Acoustic analysis has been carried out, which found the proposed 24 hour operation, will not result in adverse noise impacts during the night-time hours.

Accordingly, it is recommended that the application be approved on a 24 month trial basis to ensure the extended hours will not have an adverse impact on the adjoining residential development. The applicant will need to carry out additional noise monitoring and present the findings to Council before making application to modify the consent for permanent 24/7 hours of operation.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0933 for Use of premises as an existing approved restaurant with extended hours of operation on land at Lot 1 DP 570451, 164 Warringah Road, BEACON HILL, Lot 1 DP 575638, 164 Warringah Road, BEACON HILL, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Plan of Management	July 2020	Monique Younis
Noise Assessment	July 2020	MAC - Muller Acoustic Consulting

c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

2. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'***
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for access - New building work**
- (m) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**
- (n) AS 4674 Design, construction and fit out of food premises
- (o) AS1668 The use of mechanical ventilation

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website

http://www.humanrights.gov.au/disability_rights/buildings/good.htm

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to. (DACPLC02)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

3. Hours of Operation (Trial Period of 24 Months)

The hours of operation are approved as follows:

- 24 hours a day/7 days a week

These approved hours are limited to a trial period of 24 months from the date of this consent.

A modification application may be submitted to Council, to be lodged not more than 3 months prior to the expiration of the 24 month trial period, seeking the continuation of the extended hours of operation. If such an application is lodged, the extended hours of operation will continue to apply until such time as the application is determined by Council.

It should be demonstrated that the extended hours of operation have been in effect for a continuous period of at least 6 months prior to the lodgement of any modification application to extend or conclude the trial period.

The modification application is to be accompanied by a Noise Assessment Report, addressing noise associated with late night/early morning trading and any complaints received and how those complaints have been addressed.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

4. Commercial Waste Collection and Deliveries

Waste and recyclable material, generated by this premises and food and beverage deliveries,

must not be carried out between the hours of 9.00pm and 7.00am on any day.

Reason: To protect the acoustic amenity of surrounding properties.(DACPLG18)