

NOTICE OF MEETING

Notice is hereby given that a meeting of

MidCoastCouncil

DEVELOPMENT CONTROL UNIT

Will be held at the Administration Centre, 4 Breese Parade, Forster

5 JULY 2017 AT 2PM

The order of the business will be as detailed below (subject to variation by Council)

1. Declaration of Pecuniary or Conflicts of Interest (nature of Interest to be Disclosed)
2. Apologies
3. Confirmation of Minutes
4. Matters Arising from Minutes
5. Address from the Public Gallery
6. Matters for Information
7. Close of Meeting



Glenn Handford
INTERIM GENERAL MANAGER

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CONSIDERATION OF OFFICERS' REPORTS:

DIRECTOR PLANNING & NATURAL SYSTEMS

1 DA 331-2017 - MCDONALDS HOURS OF OPERATION

Report Author Wayne Burgess, Project Manager - Development Assessments

File No. / ECM Index DA 331/2017 & PK 23520

Date of Meeting 5 July 2017

DETAILS

Date Received: 30 January 2017

Applicant: H and I Smith Pty Ltd Trading as McDonalds Forster

Owner: McDonalds Properties Australia Pty Ltd

Land: Lots 11 and 12 DP 516509 and Lot 3 DP 16254, 18-22 Mark Street, Forster

Property Key: 23520

Zoning: R2 Low Density Residential, GLLEP 2014

SUMMARY OF REPORT

An application was previously approved for a change in trading hours of the Forster McDonald's Restaurant to 24 hours - 7 days a week for the summer school holidays for a 5 year period.

An application has now been submitted seeking a change in trading hours for a two (2) year trial period, to permit a 24 hour trade to continue on Friday and Saturday nights in addition to the 24 hour/day trading over the Summer School holidays.

Two (2) submissions have been submitted from neighbouring property owners objecting to the 24 hour trade.

NSW Police Service has also made a submission recommending the trading hours remain unchanged.

SUMMARY OF RECOMMENDATION

That the application be approved subject to conditions.

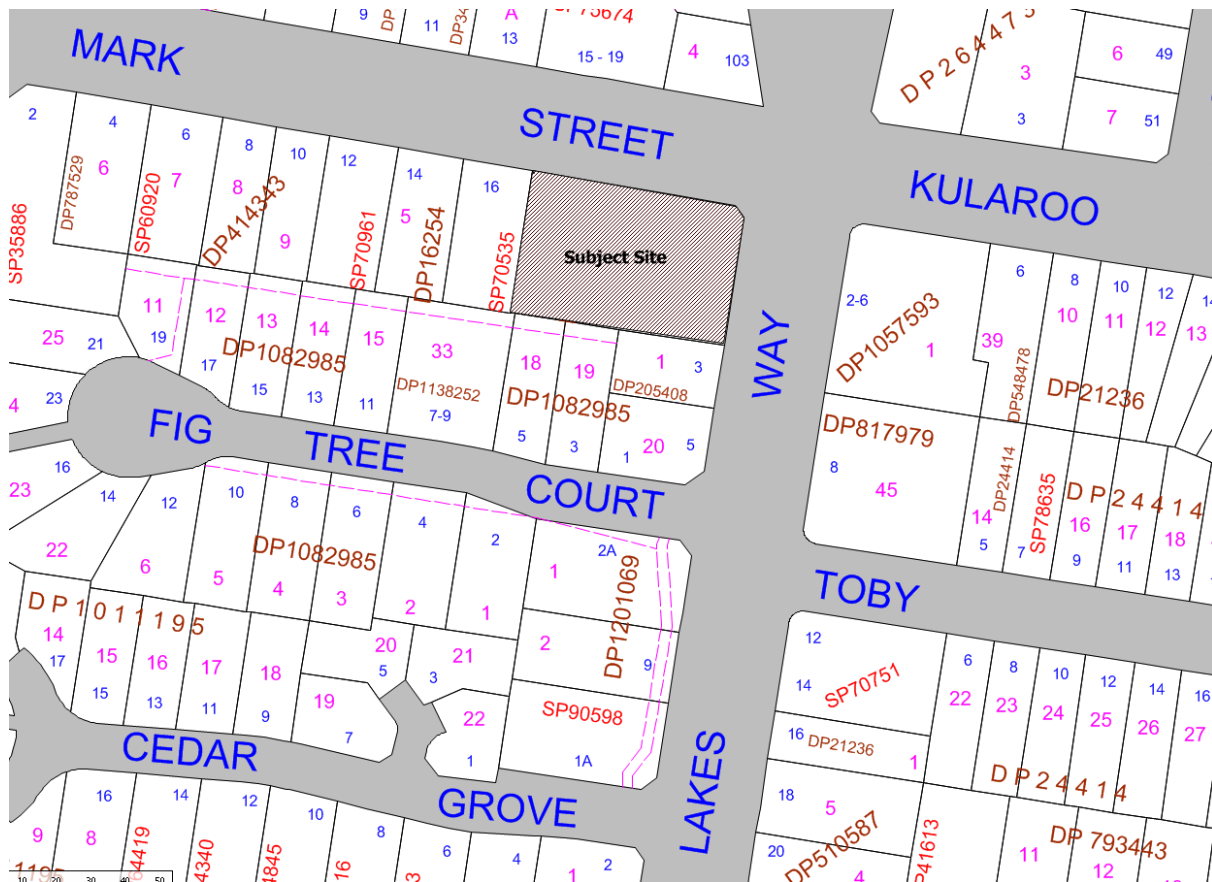
FINANCIAL/RESOURCE IMPLICATIONS

Cost of defending any appeal against Council's decision.

LEGAL IMPLICATIONS

A decision for approval subject to conditions or refusal may lead to an appeal to the Land and Environment Court requiring legal representation.

SUBJECT SITE AND LOCALITY



BACKGROUND

On 12 December 1995, consent was granted for the establishment of a McDonald's restaurant at 18-22 Mark Street, Forster (DA 138/1996). The consent included a condition restricting the hours of operation.

On 4 December 2015, Council approved Development Application No. 96/2016 for a "Change in Trading Hours 24 Hours 7 Days a Week for the Summer School Holidays for the next 5 years", for the McDonald's Restaurant at 18-22 Mark Street, Forster.

The consent was granted subject to a number of conditions including the following condition:

Time limited consent

The trading hours of operation for the next five (5) years (2015-2019) is restricted to the official dates of the NSW Public School Summer holidays as specified on the NSW Government Education Public Schools website and is limited as follows:

Location/Day	Start Time	Finish Time
Front Counter	Twenty four (24) hours/seven (7) days/week	Twenty four (24) hours/seven (7) days/week
Drive Through (Sunday to Thursday)	6:30am	10:00pm
Drive Through (Friday and Saturday)	6:30am	11:00pm
Deliveries and garbage collection	6:30am	10:00pm

The use of the front counter of the premises for twenty four (24) hours/seven (7) days/week trading period during the summer holiday period for the next five (5) years (2015-2019) shall immediately cease at the request of Council if significant public objection is received.

After completion of the summer school holidays, the trading hours of operation is limited to the current approved trading hours of operation as follows:

Location/Day	Start Time	Finish Time
Front Counter	6:00am	11:00pm
Drive Through (Sunday to Thursday)	6:30am	10:00pm
Drive Through (Friday and Saturday)	6:30am	11:00pm
Deliveries and garbage collection	6:30am	10:00pm

Reason: To protect the amenity of neighbouring properties.

SITE DESCRIPTION

The subject site is known as 18-22 corner The Lakes Way and Mark Street, Forster.

The site contains an existing McDonald's Restaurant with associated on site car parking facilities and a drive through take-away facility.

PROPOSAL

Council has received Development Application No. 331/2017 seeking a change in trading hours for a two (2) year trial period, to permit a 24 hour trade to continue on Friday and Saturday nights in addition to the 24 hour/day trading over the Summer School holidays.

The applicant provides the following information in support of the application:

- Overnight trade is through the front counter only;
- The drive through and southern end of the car park will continue to be barricaded;
- Current litter patrols will continue; and
- Continue the relationship with Great Lakes Security.

ASSESSMENT

SECTION 79C MATTERS FOR CONSIDERATION

The following matters listed under Section 79C of the *Environmental Planning and Assessment Act, 1979*, are relevant in considering this application:

- a) ***The provisions of any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation and which have been notified to the consent authority; any DCP; 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; any matters prescribed by the regulations; any coastal zone management plan that apply to the development application on the subject land.***

GREAT LAKES LOCAL ENVIRONMENTAL PLAN 2014

The site is zoned R2 Low Density Residential under the provisions of GLLEP 2014.

Restaurants are not a permissible use in an R2 zone however, the use is a lawful use which has been in existence for a number of years and therefore enjoys existing use rights.

b) *The likely impacts of development including environmental impacts on both natural and built environments and social/economic impacts in the locality*

The application proposes no building works or change in access, parking or the like.

The use of the site for 24 hour trading has potential to impact on adjoining properties by way of noise. The amenity of adjoining residents will be maintained by ensuring that the drive through facility, outside dining play areas and parking spaces adjoining the southern boundary will not be used for the extended trading period. This is a similar arrangement to that employed during the trial period.

Council received no noise complaints associated with 24 hour trading during the trial period.

c) *The Suitability of the Site for the Development*

The application is seeking a change in trading hours for a two (2) year trial period, to permit a 24 hour trade to continue on Friday and Saturday nights in addition to the 24 hour/day trading over the Summer School holidays and the site is considered to be suitable subject to conditions.

d) *Any Submissions Made in Accordance with the Act or Regulations*

The application was notified to adjoining owners in accordance with Council's Policy and two (2) submissions were received from nearby landowners. A summary of the submissions is as follows:

- It is completely unnecessary to have 24 hour trading 52 weeks of the year. It is bad enough to have it during the Christmas holidays let alone every weekend for 2 years. If McDonalds can't make enough profit during normal opening hours, then close down and move to a more convenient location away from residential areas.
- Late night trading attracts people that are affected by drugs and alcohol which leads to fights and swearing.
- Damage has occurred to a dwelling and car on nearby property since 24 hour trading occurred.

Comment:

McDonalds have been operating from the site for a large number of years and Council did not receive any complaints from residents during the last two (2) year's summer school holiday period.

NSW Police Force

The application was referred to the NSW Police Force for comment and a response has now been received.

The Police advised that it is widely recognised that late trading outlets cause problems for the community both locally and throughout the state. These problems include, but are not limited to, crimes of assault, malicious damage, loitering, noise complaints, and anti-social behaviour. These incidents are often fuelled by alcohol, particularly on a Friday and Saturday night.

The Police recommend the following:

- The trading hours of McDonalds Forster remain unchanged; and
- If the above recommendation is not supported, the Police recommend a condition be placed upon the approval which would allow the Police Force to make application to Council to modify the approval should the extended trading hours contribute to crime and/or anti-social behaviour in the area.

The Police have reported in their letter, incidents that have occurred at the Forster McDonald's Restaurant and that these incidents are issues where Police are taken away from other areas of investigation, such as domestic violence related matters, to attend to these incidents, where they would normally be required to intervene or investigate.

The Police have given examples of fifteen (15) incidents for the period 13 February 2014 to 21 January 2017. These incidents included drug searching, intoxicated behaviour by persons, swearing, harassing customers and assault/anti-social behaviour. Five (5) of the incidents occurred during the extended trading hours.

The Police conclude that despite the existence of CCTV and security at the Restaurant, this appears to have not been a preventative measure or deterrent to anti-social behaviour and crime that is occurring at the moment and for these reasons they are objecting to this application.

Comment:

The Police do not support an extension to the trading hours however, of the incidents reported above; only five (5) incidents have occurred during the approved late night summer school holiday period.

The Police have indicated that if the extended trading hours are approved that they be subject to a reviewable condition with the review being undertaken if significant complaints are received from the Police or Public regarding crime or other disorderly or anti-social behaviour. It is agreed that if consent is granted, it be subject to such a condition.

e) *The Public Interest*

The application to extend the hours of operation gives the general public (including tourists) the opportunity to purchase food late at night.

CONCLUSION

The application is seeking a change in trading hours for a two (2) year trial period, to permit a 24 hour trade to continue on Friday and Saturday nights in addition to the 24 hour/day trading over the Summer School holidays.

The application involves the use of the front counter only for the extended trading hours.

Having regard to the issues raised by the Police and Public, it is considered that the application be supported subject to conditions, whereby the use of the front counter for the extended trading period shall immediately cease if Council receives significant objection from either the Police or the Public. This can be achieved in the form of a reviewable condition, whereby Council could review the terms of the condition should significant complaints be received regarding the operation of the approved use.

Also, restrictions on parking arrangements, security of premises and the outside dining area and playground equipment are also required.

RECOMMENDATION

It is recommended that Development Application 331/2017 for a change in trading hours for a two (2) year trial period, to permit a 24 hour trade to continue on Friday and Saturday nights in addition to the 24 hour/day trading over the Summer School holidays at the McDonald's Restaurant at 18-22 corner of The Lakes Way and Mark Street, Forster be approved in accordance with the conditions of consent contained in Annexure A.

ANNEXURES

A: Conditions of consent for DA 331/2017

GENERAL CONDITIONS

1. Development in accordance with supporting document

The development must be implemented in accordance with the supporting documents except where modified by any conditions of this consent.

Reason: Information and to ensure compliance.

2. Time limited consent

The trading hours of operation for the next two (2) years (5 July 2017- 5 July 2019) for Friday and Saturday nights and the official dates of the NSW Public School Summer holidays (as specified on the NSW Government Education Public Schools website) is limited as follows:

Location/Day	Start Time	Finish Time
Front Counter	Twenty four (24) hours/seven (7) days/week	Twenty four (24) hours seven (7) days/week
Drive Through (Sunday to Thursday)	6:30am	10:00pm
Drive Through (Friday and Saturday)	6:30am	11:00pm
Deliveries and garbage collection	6:30am	10:00pm

In accordance with Section 80A (10B) of the Environmental Planning and Assessment Act 1979, this condition is a reviewable condition. Upon the condition being reviewed, the limitations on proposed trading hours may be varied in accordance with the recommendations of the review. The purpose of this reviewable condition is to enable the limitations of proposed trading hours for the front counter to be reviewed should significant complaints be received from the Police or Public regarding crime or other disorderly or antisocial behaviour.

Trading hours of operation for periods other than Friday and Saturday nights and the official dates of the NSW Public School Summer holidays (as specified on the NSW Government Education Public Schools website) are restricted to the current approved trading hours as follows:

Location/Day	Start Time	Finish Time
Front Counter	6:00am	11:00pm
Drive Through (Sunday to Thursday)	6:30am	10:00pm
Drive Through (Friday and Saturday)	6:30am	11:00pm
Deliveries and garbage collection	6:30am	10:00pm

Reason: To protect the amenity of neighbouring properties.

3. Restriction of parking spaces

The drive through take away facility and on-site parking spaces adjoining the southern boundary of the site are not to be used on Friday or Saturday nights and the summer school holiday period (inclusive) from 10.00pm to 6.30am (Sunday to Thursday) and 11.00pm to 6.30am (Friday and Saturday). Physical barriers are to be erected in order to meet the requirements of the condition.

Reason: To protect the amenity of neighbouring properties.

4. Security of Premises

A Specialist Security Service is to provide security on site between the hours of 11.00pm to 6.00am. One (1) security guard to be employed to provide static and mobile patrols of the premises.

Reason: To protect the amenity of neighbouring properties.

5. Restriction on the dining area

The outside dining area and playground equipment are not to be used between the hours of 11.00pm to 6.00am.

Reason: To protect the amenity of neighbouring properties.

6. Entry /exit points

All entry/exit points to unauthorised areas of the premises shall be restricted at all times to staff employed at the premises.

Reason: To assist with staff's natural surveillance of the area.

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**2 460/2016/DA/A - USE OF WINGHAM ANGLICAN CHURCH HALL AS
DANCE STUDIO**

Report Author Lisa Proctor, Town Planner

File No. / ECM Index 460/2016/DA/A

Date of Meeting 5 July 2017

DETAILS

Date Received: 4 April 2017

Applicant: Kerrie Renee Dance Studio

Owner: Trustees of Church Property for the Diocese of Newcastle

Land: Lot 9 Sec 18 DP 759099, Lot 9 Canget Street, Wingham 2429

Property Key: 2493

Zoning: R1 – General Residential, Greater Taree Local
Environmental Plan (GTLEP) 2010

SUMMARY OF REPORT

- Application for modification of a development consent for the use of the Wingham Anglican Church Hall as a dance studio.
- The application is for modification of conditions 8 and 9 relating to the operating hours of the dance studio and the requirement to have the eastern facing door and windows of the tap studio closed for the duration of classes.
- The modification application was notified to adjoining landowners for a period of 24 days. Four submissions were received in that time. Three submissions object to the proposed modification and one submission is in support of the proposed modification.

SUMMARY OF RECOMMENDATION

It is recommended that condition 8 be modified to allow some increase in operating hours, subject to restrictions, and that condition 9 be modified to allow the eastern facing door and windows to be open during classes.

FINANCIAL/RESOURCE IMPLICATIONS

Cost of defending any appeal against Council's decision.

LEGAL IMPLICATIONS

A decision for approval, subject to conditions, or refusal, may lead to an appeal to the Land and Environment Court requiring legal representation.

SUBJECT SITE AND LOCALITY

The subject site is located in the town of Wingham within an established residential area approximately 320m south of the Wingham town centre.

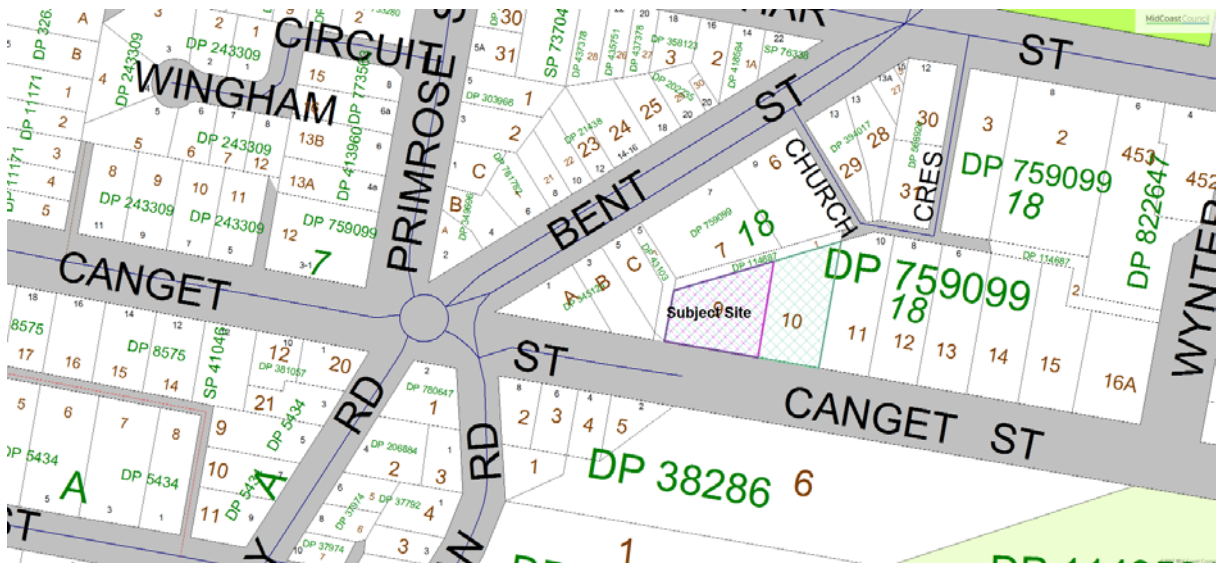


Figure 1: The subject site

BACKGROUND

The Wingham Anglican Church Hall has been leased to Kerrie Renee Dance Studio by the Newcastle Anglican Diocese since February 2014. Kerrie Renee Dance Studio offers dance and performing arts classes from the Hall to children between the ages of 2 to 18 years.

During April and May 2016 Council received a number of complaints from residents of Canget and Bent Streets, Wingham, that the business was operating without consent and causing amenity issues for it’s neighbours. Council contacted the owners of the Kerrie Renee Dance Studio and advised them that they would need to lodge a development application for the use of the Hall as a dance studio so that the potential impacts of the Kerrie Renee Dance Studio could be considered.

Kerrie Renee Dance Studio lodged a development application for the use of the Hall as a dance studio on 26 May 2016. On 9 November 2016 Council approved development application 460/2016/DA for the use of the Wingham Anglican Church Hall as a dance studio, subject to twelve (12) conditions of consent.

On 4 April 2017 Kerrie Renee Dance Studio lodged an application to modify conditions 8 and 9 of the development consent in accordance with S96(1A) of the Environmental Planning and Assessment (EP&A) Act, 1979.

Condition 8 reads:

- 8. *For the purposes of preserving the amenity of neighbouring residents hours of operation are restricted to the times specified in the following table:*

Day	Start Time	Finish Time
<i>Mon - Thurs</i>	<i>2.00 pm</i>	<i>8.45 pm</i>

Up to three rehearsals in any calendar year may be held on a Saturday between the hours of 9am and 4pm only.

The operating hours were set by Council to align with the hours of operation that were current at the time the application was lodged. The purpose of applying a restriction on the operating hours of the dance studio was to ensure that the potential noise and amenity impacts on the neighbouring residents could be considered by Council if the dance studio was to increase its hours of operation at the Hall and to offer neighbours the opportunity to make submissions to Council on any proposed increase in operating hours.

Condition 9 reads:

9. *All doors and windows within the tap studio and ballet studio must be kept closed for the duration of all dance classes.*

Condition 9, requiring all doors and windows to be closed during the operation of the dance classes, was included to maximise the reduction in noise and amenity impacts on the neighbouring residents as noise and amenity were identified as two key issues of concern for the neighbours.

The original consent in full is included at Annexure A.

PROPOSED MODIFICATIONS

Proposed Modification to Condition 8: The applicant has applied to modify condition 8 to allow operation of the dance studio on Fridays and Saturdays as the business has grown since the approval was issued in November 2016 and the dance studio is operating at capacity in relation to the numbers of classes it can provide within the restricted hours. The applicant is currently turning down requests for additional classes due to the restrictions on operating hours. The modification application states that Fridays and Saturdays are required for holding classes during normal business hours and additional events throughout the year such as examinations, community workshops, competition rehearsals and catch-up classes. The applicant has stated that they may not require Saturday classes every weekend, but request the flexibility to operate on Saturdays when required.

Proposed Modification to Condition 9: The applicant has applied to modify Condition 9 to allow the eastern facing door and windows on the tap studio to be open when classes are in operation. The applicant's justification for this is that the temperature in the tap studio during summer is so high that it is unsuitable for use with the doors and windows closed, due to reduced airflow. The applicant has stated that the door and windows of the tap studio would only be open on days when the ambient temperature is high enough outside to make the tap studio uncomfortably hot with the door and windows closed.

REPORT

In applying to modify a consent involving minimal environmental impact in accordance with S96(1A) of the EP&A Act 1979 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 proposed modification is of minimal environmental impact,*

Assessment of Proposed Modification of Condition 8: An increase in the operating hours of the dance studio is likely to have amenity impacts on neighbours due to reduced reprieve from the noise and traffic associated with the dance studio. This has been strongly expressed in the objections.

In considering whether to approve the proposed modification to Condition 8, it is of relevance that the Wingham Anglican Church Hall was built in the early 1900s and has over the years been used at its current location for various noise and traffic generating activities. The Hall may legally be used seven days per week for a variety of uses, including band rehearsals, functions and workshops or classes. All of those uses would generate noise and traffic. It is however highly unlikely that if the Hall was not leased to Kerrie Renee Dance Studio it would be used as frequently as it is at present. Therefore, the neighbours would have had a reasonable expectation of periodic relief from the noise and traffic of activities associated with the Hall when they purchased their properties. Despite this, the noise levels generated by the dance studio fall within the acceptable criteria of the NSW Industrial Noise Policy (INP) and the proposed modification is considered to fall within the realms of "minimal environmental impact" subject to a restriction on the use of the Hall for the dance studio limiting weekend classes. The Acoustic Report lodged with the original application is included as Attachment A.

Assessment of Proposed Modification of Condition 9: The Acoustic Report demonstrates that the noise levels at the nearest residential receivers for the dance studio are below the level set in the INP for the day and evening periods (Acoustic Report page 7 Table 7-1). The noise levels used in the assessment of the acoustic impacts on neighbours were taken with the door and window of the tap studio open (shown at position c, page 7 of the Acoustic Report).

The residential receiver at 2 Canget Street received a noise level of 34dBA during the assessment period (Acoustic Report page 7 Table 7-1). The measured noise levels were used to undertake an assessment of the noise levels of the dance studio against the intrusiveness criteria of the INP. The intrusiveness level at 2 Canget Street is 1dBA below the allowable INP intrusiveness level.

In support of the modification application, the applicant lodged further information relating to the noise levels recorded from the eastern door and window of the tap studio. That information demonstrates that the noise level recorded at position c is not the source noise level that would be heard at 2 Canget Street as the level is reduced by the shielding effect of the walls of the building. Therefore the proposed modification of Condition 9 is considered to be of minimal environmental impact.

b) *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),*

The approved development is for the use of a Church Hall as a Recreation Facility (Indoor). The development to which the modified consent relates is still be for the use of a Church Hall as a Recreation Facility (Indoor). The proposed modifications relate only to conditions imposed on the development.

c) *It has notified the application in accordance with:*

i) *the regulations, if the regulations so require,*

Not applicable.

ii) *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,*

Council's Greater Taree DCP 2010, Part A, requires that Council notify this application. The application was notified for a period of 24 days and 4 submissions were received in that time. Three submissions object to the proposed modifications and one submission is in support of the proposed modifications.

- d) *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.*

Four submissions were received to the proposed modification. The issues raised, and Council's response are detailed below in Table 1:

Submission Number	Issue Raised	Council Response
1	A 34 hour increase in operating hours is not a minor adjustment.	The assessment criteria relates to "minimal environmental impact". The proposed modifications are considered to be of minimal environmental impact.
1	The acoustic report does not say that the eastern facing doors can be opened during classes.	The sound levels were measured with the eastern facing doors open.
1	The acoustic report acknowledges unshielded noise to the southern side of the hall via the open eastern doors.	Clarification provided by the acoustic consultant states that the noise level recorded at position c is not the source noise level that would be heard at receiver 2. Refer to Annexure B.
1	The tap studio generates considerable noise.	The acoustic report shows that the noise level from the tap studio is within the INP acceptable levels.
1	Can the tap studio be air-conditioned? The air-conditioning was successful in cooling the larger room and when it is hot outside having the doors open would be unlikely to cool the tap studio.	The applicant has stated that the doors of the tap studio would rarely need to be opened, therefore it is not economical to air-condition the tap studio.
1	There is no insulation in the hall to deflect heat or noise.	Noted.
1	Conditions 8 and 9 maintain amenity and manage the adverse impacts of the dance studio.	Noted.
1	The proposed modifications are not a minimal environmental impact or trivial error. The neighbours have been seriously affected by the dance studio.	The proposed modifications are considered to be of minimal environmental impact.
1	Increasing operating hours leaves the dance studio with loose time constraints	The amended conditions would restrict the operating hours of the dance studio.
1	The hall is old and raised on piers. The vinyl flooring has not absorbed the thumping and music is audible during the noisiest classes.	An assessment of the noise levels generated by the dance school was undertaken for the original application.

Submission Number	Issue Raised	Council Response
1	Increasing business activity would increase traffic flow and damage the road and prevent visitors from enjoying the view. Hundreds of traffic movements per day is dangerous.	The traffic generated by the dance studio was assessed by Council's Engineering Department as being acceptable during the original application. The proposed modifications will not change the numbers of vehicles accessing the site at any one time, but will increase the frequency of vehicles accessing the site. The increased frequency is considered to be acceptable.
1, 2	The modifications will result in the development being a full time commercial operation. It is out of character with the neighbourhood and is more suited to an industrial estate.	The development is permissible with consent in the zone. The hall can be used for many noise-generating activities including band rehearsals, functions, concerts, worship etc.
1	Dance classes on Fridays and Saturdays will deny neighbours peace, rest and relaxation in their homes.	The noise levels generated by the dance studio are within the INP acceptable levels. The acoustic report acknowledges that the regulations are designed to protect 90% of residents 90% of the time, but occasionally a hyper-sensitive person may be affected and that this development could be one such example.
1	Friday and Saturday nights are considered to be times of leisure. The only day of reprieve from the amenity impacts of the dance studio will be on Sundays. The mental health of neighbours will be affected, our lives will be unpredictable and it will intrude on our right to tranquillity in our homes.	This issue has been considered in modifying condition 8.
1	Examinations, catch-up classes, rehearsals and workshops do not require 6 days / week at 11 hours / day.	The structure of the dance classes is not a planning consideration.
1	The KR Dance Studio premises in Taree could accommodate the extra classes.	This option has not formed part of the application.
1	Why are classes required for school aged children during school hours?	The age of the participants is not a planning consideration.
1, 2	The car parking is inadequate.	The car parking complies with Council's DCP 2010 and was assessed in the original application as being adequate.

Submission Number	Issue Raised	Council Response
1	The dance studio has installed a floodlight.	The installation of a floodlight is not a relevant consideration in assessment of the application to modify the consent. Notwithstanding, consent is generally not required for installation of lighting.
1	The CCTV is aimed directly at neighbouring bedrooms and living areas and is a gross intrusion.	The location of existing CCTV was considered with assessment of the original application and is not relevant to the proposed modification.
1	KR Dance Studio published defamatory comments about neighbours on their website and sent upsetting letters to one neighbour.	This is not relevant to the proposed modifications.
2, 3	The Administrator made directions as to all doors and windows being closed when the studio is in operation and said that any appeal would be unlikely to be upheld.	No specific directions were made by the Administrator regarding the doors and windows, or an appeal, however in approving the original application the Administrator agreed that the conditions were appropriate at that time.
2	If the modifications are approved we will consider legal action.	Noted.
2	Property values have decreased.	This cannot be substantiated.
3	The dance studio has destroyed my home life. The noise and thumping are psychologically wearing and resulting in mental health issues for me.	This has been taken into consideration when considering the proposed modification to the operating hours.
4	We are the closest neighbours to the dance studio and submit that the dance studio does not cause disturbance for us in any way.	Noted.
4	The noise from the dance studio would not be problematic if the modification is approved.	Noted.
4	The development has a positive community impact.	Noted.
4	The development has an economic benefit for the hall.	Noted.

CONCLUSION

The modification of Condition 8 to allow a substantial increase in operating hours is likely to have an adverse impact on the amenity of the neighbouring properties. For this reason, restrictions on operating hours have been placed on the modified conditions of consent to limit classes on Saturday to no more than 12 on any one calendar year.

The modification of Condition 9 to allow the door and windows of the tap studio to remain open is unlikely to have an adverse impact on the amenity of the neighbouring properties and the condition can be modified to allow the door and windows of the tap studio to be open during classes.

RECOMMENDATION

That development consent 460/2016/DA be modified by:

1. Amending Condition No. 8 to read as follows:

8. *For the purposes of preserving the amenity of neighbouring residents hours of operation are restricted to the times specified in the following table:*

Day	Start Time	Finish Time
<i>Mon - Fri</i>	<i>10am</i>	<i>8.45 pm</i>

Up to 12 classes in any calendar year may be held on a Saturday between the hours of 9am and 4pm only. No classes are to be held on Sundays.

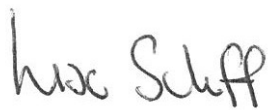
2. Amending Condition No. 9 to read as follows:

9. *All doors and windows within the ballet studio, on the western and southern sides of the building must be kept closed for the duration of all dance classes.*

ATTACHMENT

A: Acoustic Report

Attachment A has been circulated in hard copy to the Administrator and Senior Staff only as a paper conservation measure. However, this Attachment is publicly available on Council's Website, copies are available at Council offices and copies are available on request.



LISA SCHIFF
Director
Planning and Natural Systems

ANNEXURES

A: Original Consent

B: Supplementary Acoustic Information

E T Bates and K R Bates
PO Box 398
WINGHAM NSW 2429

Ref: 460/2016/DA/A
Enquiries: Lisa Proctor

Notice of Determination
Modification of Development Consent
Issued under the Environmental Planning and Assessment Act 1979

DEVELOPMENT DETAILS

Modification Consent No. 460/2016/DA/A

Property Details: Lot 9 Sec 18 DP 759099, Lot 10 Sec 18 DP 759099
Lot 9 Canget Street, Wingham NSW 2429

Modified Development Details: Use of Dance Studio

Determination: Approved

Date determined:

Modified Conditions of Consent

1. Amend Condition No. 8 to read:
8. For the purposes of preserving the amenity of neighbouring residents hours of operation are restricted to the times specified in the following table:

Day	Start Time	Finish Time
Mon - Fri	10am	8.45 pm

Up to 12 classes in any calendar year may be held on a Saturday between the hours of 9am and 4pm only. No classes are to be held on Sundays.

2. Amend Condition No.9 to read as follows:

9. All doors and windows within the ballet studio, on the western and southern sides of the building, must be kept closed for the duration of all dance classes.

Reasons for Conditions

The modified conditions have been imposed in order to safeguard the present and likely future amenity of the locality and to ensure a satisfactory standard of development.

Section 96(6) of the Environmental Planning and Assessment Act confers on an applicant for modification of consent who is dissatisfied with the determination of the application by the consent authority a right of appeal to the Land and Environment Court.

Enclosed for your information is the amended plan (where applicable) and consent.

Please note that modification of this consent under Section 96 of the Environmental Planning and Assessment Act may require amendment to any Construction Certificate for this development (if a Construction Certificate has been previously issued). It is recommended that you check with your Principal Certifying Authority.

Yours faithfully

**Lisa Proctor
Town Planner**

Encl. Modified Consent No. 460/2016/DA/A

17 November 2016

Ref: 460/2016/DA
MidCoast Council - **Taree Branch**
Enquiries: Lisa Proctor

E T Bates and K R Bates
PO Box 398
WINGHAM NSW 2429

Notice of Determination Development Application

Issued under the Environmental Planning and Assessment Act 1979
Sections 80, 80A & 81(1)(a)

Development Consent No: 460/2016/DA

Property Address: Lot 9 Sec 18 DP 759099, Lot 10 Sec 18 DP 759099
Lot 9 Canget Street, Wingham NSW 2429

Description: Use of Dance Studio

Determination: **Approved Subject to Conditions**

Determination Date: 9 November 2016

Consent to lapse on: 9 November 2021
(If physical commencement has not occurred)

Statutory Instrument: Greater Taree Local Environmental Plan 2010

Other Approvals: Nil

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460/2016/DA

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General Requirements

The following conditions of consent are general conditions applying to the development.

1. The development is to be carried out in accordance with the details submitted with application 460/2016/DA and the stamped plans (as amended by the following conditions).

Prior to Issue of the Occupation Certificate

The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

2. An application for an Occupation Certificate must be submitted to and approved by the Principal Certifying Authority prior to occupation of the building.
3. The Occupation, use of the building or part of the new building must not commence until an Occupation Certificate has been issued by Council.
4. The Kerrie Renee Dance Studio signage attached to the Wingham Anglican Church Hall must be removed. No advertising sign/s shall be erected on, or in conjunction with, the development without prior development consent.
5. The attached Fire Safety Schedule forms part of this consent and each of the essential fire safety measures identified therein must be specified in the Final Fire Safety Certificate.
6. A final Fire Safety Certificate shall be obtained in accordance with Part 9, Division 4 of the Environmental Planning and Assessment (Amendment) Regulation 2000, prior to the issue of the Final Occupation Certificate for the building. A copy of the Fire Safety Certificate and Fire Safety Schedule shall be:
 - Forwarded to MidCoast Council;
 - Forwarded to the Commissioner of the New South Wales Fire Brigade; and
 - Prominently displayed in the building.

Ongoing Operations

The following conditions of consent shall be complied with through out the operational life of the development.

7. Pursuant to Part 9, Division 5 of the Environmental Planning and Assessment Regulation (as amended) the owner of the building shall furnish Council with an Annual Fire Safety Statement from a competent person so as to certify the essential fire safety measures in the building. The Annual Fire Safety Statement shall be completed within 12 months of the issue of the fire safety certificate, and then on an annual basis. A copy of the Fire Safety Statement obtained and Fire Safety Schedule shall also be:
 - Forwarded to the Commissioner of the New South Wales Fire Brigade; and

- Prominently displayed in the building.

8. For the purposes of preserving the amenity of neighbouring residents hours of operation are restricted to the times specified in the following table:

Day	Start Time	Finish Time
Mon - Fri	10am	8.45 pm

Up to 12 classes in any calendar year may be held on a Saturday between the hours of 9am and 4pm only. No classes are to be held on Sundays.

(460/2016/DA/A – Modified 12 July 2017)

9. All doors and windows within the ballet studio, on the western and southern sides of the building, must be kept closed for the duration of all dance classes.
(460/2016/DA/A – Modified 12 July 2017)
10. All patrons of the dance studio are to be advised annually in writing that parking for the studio is available within the grounds of the Hall and should be used when spaces are available in preference to on-street parking.
11. The Hall car park must be lit when classes are run from the Hall after dark.
12. Noise associated with use of the premises shall not exceed the allowable noise criteria specified in Matrix Industries Acoustic Report – KR Dance Studio dated 22 September 2016 (Report No. 16516.01). Noise levels that must not be exceeded are:

Receiver	Location	Allowable dB(A)
Day Time		
5 Bent Street	Boundary	43
2 Canget Street	Boundary	45
Evening		
5 Bent Street	Boundary	40
2 Canget Street	Boundary	41

Advisory Note

- a. Separate approval may be required by Mid Coast Water (MCW) where the development may have an affect on Mid Coast Water's Sewer and water infrastructure. To determine any requirements please contact MCW on 1300 133 455.

Reasons for Conditions

- a. The conditions have been imposed in order to safeguard the present and likely future amenity of the locality and to ensure a satisfactory standard of development.

Are you dissatisfied with conditions of consent?

If you are unhappy with conditions of consent discuss your concerns with the officer who dealt with your application. You may submit an application to Council to modify the consent under Section 96 of the Environmental Planning & Assessment Act, 1979. You will need to provide reasons why the conditions should be changed or deleted. You may lodge a Section 96 application at any time after the notice of determination. If you are not happy with Council's decision on your request for modification, then you may appeal to the Land & Environment Council within six (6) months of the notification by Council.

Right of Review

You may request Council to review its decision under Section 82A of the Environmental Planning and Assessment Act, 1979. Such a request must be in writing together with payment of the appropriate fee and made within six (6) months of the date of the determination, or if there is an appeal to the Land and Environment Court, up to the time when the court hands down its decision. In reviewing its decision Council is able to consider alterations to the above plans, provided that the Development Application remains substantially the same as the one for which the consent was originally sought, and the changes are publicly notified.

NOTE: This clause does not relate to integrated development, designated development, complying development or applications determined by the Joint Regional Planning Panel or applications previously considered under Section 82A of the Environmental Planning and Assessment Act 1979.

Right of Appeal

If you are dissatisfied with this decision, Section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice.

Section 97 of the Environmental Planning and Assessment Act 1979 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.

Lisa Proctor
Town Planner

Dated: 17 July 2017

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