

## REPORT TO GEORGES RIVER COUNCIL IHAP MEETING OF 22 September 2016

<b>IHAP Report No</b>	5	<b>Development Application No</b>	DA2013-0103
<b>Site Address &amp; Ward Locality</b>	799 King Georges Road, South Hurstville Blakehurst Ward		
<b>Proposal</b>	Section 96 Modification - change of hours		
<b>Report Author/s</b>	Manager - Planning and Development, George Andonoski		
<b>Zoning:</b>	B2 - Local Centre		
<b>Date of Lodgement</b>	25 September 2015		
<b>Owner</b>	McDonald's Australia Ltd		
<b>Applicant</b>	McDonald's Australia Ltd		
<b>Submissions</b>	Ten (10)		
<b>Cost of Works</b>	\$803,000.00		
<b>Issues</b>	Proposed 24 hour use and number of submissions.		
<b>Recommendation</b>	That the application be approved subject to the conditions included in the report.		

### Site Plan



## **Executive Summary**

1. Council has received an application pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979 (EPA Act) to modify the approved development for the alterations and additions to the existing McDonalds Restaurant and extension to hours of operation. The modification sought is to amend hours of operation to 24 hours, seven (7) days a week for the restaurant and drive –thru service.

## **Site and Locality**

2. The legal description of the land is known as Lot 1 DP 606374 (No.799) King Georges Road, South Hurstville. The subject site is located on the south-eastern corner of the King Georges Road and Greenacre Road intersection and provides vehicle and pedestrian access from Greenacre Road. Located on the site is a food premise called 'McDonalds'.
3. The site is a relatively level, irregular shaped corner allotment with a total site area of 1,938sqm. It has a frontage of 51.89m to King Georges Road and a secondary frontage to Greenacre Road of 46.45m. The site is located on the fringe of the local commercial precinct of South Hurstville.

## **Zoning and KLEP 2012 Compliance**

4. The site is zoned B2-Local Centre under KLEP 2012 and the proposal is a permissible form of development with Council's consent. The proposed development satisfies all relevant clauses contained within KLEP 2012.

## **Submissions**

5. Ten (10) submissions were received raising the following concerns
  - Extension of the hours of operation to 24hr trading
  - Anti-social behaviour
  - Traffic and Parking
  - Noise

## **Conclusion**

6. The application has been assessed having regard to the provisions of Section 96 (2) and Section 79C (1) of the Environmental Planning and Assessment Act 1979.
7. Having regard to the above, it is considered that the modifications would result in a development that is substantially the same as that originally approved. Accordingly, the proposed modifications can be supported subject to the imposition of a 'Reviewable' condition in relation to the additional hours of operation.

## Report in Full

8. Council granted Development Consent No: 103/2013 for development for the alterations and additions to the existing McDonalds Restaurant and extension to hours of operation on 3 December 2013.
9. The application made pursuant to Section 96 (2) of the Environmental Planning and Assessment Act to modify Development Consent No. 103/2013 is to amend the hours of operation to 24 hours, seven (7) days a week for the restaurant and drive –thru service. The current approved hours being;

Restaurant:	Sunday to Thursday:	5:00am-10:00pm
	Friday & Saturday:	5:00am-12:00 Midnight
Drive Through:	Monday to Sunday:	5:00am-12:00 Midnight

## The Site and Locality

10. The legal description of the land is known as Lot 1 DP 606374 (No.799) King Georges Road, South Hurstville. The subject site is located on the south-eastern corner of the King Georges Road and Greenacre Road intersection and provides vehicle and pedestrian access from Greenacre Road. Located on the site is a food premise called 'McDonalds'.
11. The site is a relatively level, irregular shaped corner allotment with a total site area of 1,938sqm. It has a frontage of 51.89m to King Georges Road and a secondary frontage to Greenacre Road of 46.45m. The site is located within the local commercial precinct of South Hurstville.
12. The southern and eastern boundaries adjoin commercial developments including a supermarket and loading dock accessed off the Princes Highway. Adjoining the site to the south is a neighbourhood shopping centre comprising IGA supermarket and a range of specialty shops. To the south-east, along King Georges Road is the IGA supermarket loading dock which separates the subject site from the adjacent Kings Head Tavern. To the north, on the opposite side of King Georges Road is a mix of new and older style residential housing with some retail shops. To the west of the site, on the opposite side of Greenacre Road are single dwelling houses.



## Background

13. The building and subject premise has been occupied and operating as a food and drink premises 'McDonalds' since 1979 (approved 6 November 1978).
14. Development Application 103/2013 for the alterations and additions to the existing McDonalds restaurant and extension of hours of operation to 24 hours 7 days a week was lodged with Council 24 May 2013. The application was advertised and notified for a period of two weeks where eleven (11) submissions were received.
15. The application was determined by Council at its regular meeting of 25 November 2013 where the application was approved subject to reduced hours of operation as quoted above.
16. A Section 96(2) application was lodged with Council on 15 September 2015 and advertised and notified for a period of two weeks, where ten (10) submissions were received.
17. Concerns raised by Council officers in relation to the acoustic report and comments by NSW Police were also forwarded to the applicant to address.
18. The issues relating to the acoustic report were finally resolved to the satisfaction of Council officers with an addendum statement to the amended acoustic report being submitted on 20 June 2016. The amended acoustic report and addendum and modified Plan of Management are the basis for the assessment of this application.

## Section 96 Considerations

19. The application has been made pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979 to modify Development Consent No: 103/2013 dated 3 December 2013 and involves the following modifications to the approved development.
  - a) Increase the hours of operation to 24 hours, seven days a week for both the restaurant and drive through service.

## Comment

20. The proposal seeks to increase the hours of operation to 24 hours per day, seven days a week for both the restaurant and drive through service. Given the location of the subject site, being on the fringe of a Local Business Centre Precinct and adjoining a major road, the increase in hours are not unreasonable for this type of use.
21. The applicant submitted a Safer by Design Assessment of the application, which was then forwarded to the NSW Police who reviewed the submission. The police advised they had major concerns with the proposed hours and identified the site as a moderate crime risk.
22. The conclusion from NSW Police however raises no objection subject to suggestions in their assessment being implemented. These suggestions were forwarded to the applicant, who has incorporated these measures in the amended Plan of Management. The Police assessment report and recommendations can be included in any modified consent granted.
23. In addition to the above, Council's Environmental Health Officer has reviewed the application and whilst they have no objection to the application, they have requested a twelve month (12) trial period to ensure that noise emission from the proposed additional hours of use do not unreasonable diminish the amenity or result in noise intrusion which would be unreasonable to local residents.
24. The report recommends a reviewable condition for the additional hours in lieu of a twelve (12) month period as it will allow Council to review these hours prior to a 12 month period if a number of complaints arise and are founded and it avoids having to go through the whole process again if it's found that the increased hours have very little impact. It also allows Council to review the hours beyond the initial 12 month period, which will ensure the operators are conscious of the need to monitor the operation of the business and adhere to the commitments of the Plan of Management.

25. The application was also referred to Roads and Maritime Services for their comments based on the proximity to King Georges Road. RMS raised no objection to the additional hours of use, but suggested Council consider a “No Stopping” Zone in Greenacre Road from King Georges Rd to the start of the entry driveway. This matter was discussed with Council’s Traffic Engineer who did not believe that this is required at this point and the situation can be monitored. There is ample road width and sight lines so as not to impact on access to and from the site. It is assumed that there would be more demand for parking in this locality during the day, and already approved hours of use, and therefore will not be significantly impacted by demand arising from the additional hours between midnight and 5:00am.
26. Section 96(2) of the Environmental Planning and Assessment Act 1979 enables the consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

**Is satisfied that the proposed modification is of minimal environmental impact?**

Comment

27. The modification is a Section 96(2) application and will have an environmental impact which is subject to this assessment.

**Is satisfied the proposed development as modified is substantially the same development for which consent was originally granted?**

Comment

28. The proposed development as modified would represent substantially the same development for which consent was originally granted.

**Has consulted with the relevant Minister, public authority or approval body with respect to a condition imposed on the consent or general terms of approval.**

Comment

29. Not Applicable

**Has advertised and or notified the application in accordance with the regulations or a development control plan?**

Comment

30. The application was advertised in the Local Newspaper and neighbour notified in accordance with the provisions of Section A2 – Public Notification of KDCP 2013.

**Has considered any submissions made concerning the proposed modification.**

## Comment

31. Ten (10) submissions were received raising a number of concerns which are discussed later in this report.

## **Section 79C Assessment**

32. The following is an assessment of the application with regard to Section 79C (1) of the Environmental Planning and Assessment Act 1979.

### **(1) *Matters for consideration – general***

***In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:***

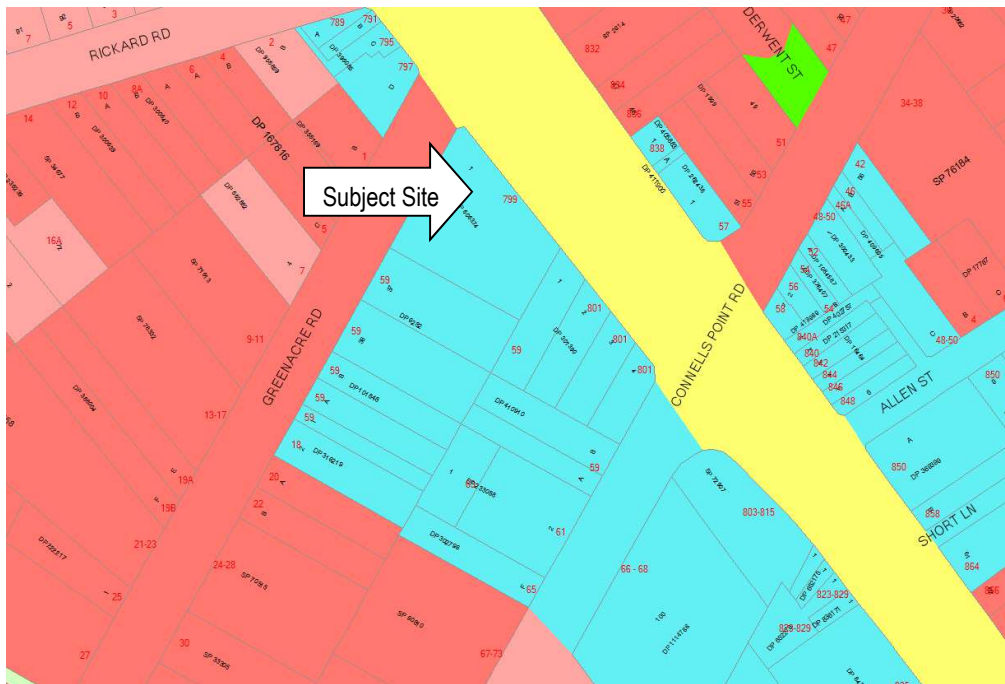
- (a) *the provision of:***  
**(i) *any environmental planning instrument,***

## **Kogarah Local Environmental Plan 2012 (KLEP 2012)**

### **Part 2 – Permitted or Prohibited Development**

#### Clause 2.1 – Land Use Zones

33. The subject site is zoned B2 – Local Centre and the proposed development is defined as a ‘Food and Drink Premises’ pursuant to the KLEP 2012. ‘Food and Drink premises’ is a form of ‘Retail premises’ which is a form of ‘Commercial premises’, being a permissible form of development with Council’s consent in the zone.
34. The objectives of the B2 – Local Centre zone are as follows:
- *“To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
  - *To encourage employment opportunities in accessible locations.*
  - *To maximise public transport patronage and encourage walking and cycling.”*
35. The proposed development is considered to be consistent with the objectives of the zone.



**Clause 5.9 – Preservation of Trees or Vegetation**

36. The proposed modification does not involve the removal of any tree or vegetation subject to the provisions of this clause.

**Clause 5.10 – Heritage Conservation**

37. The subject site is not listed as a heritage item in Schedule 5, is not within a Heritage Conservation Area, nor are there any heritage items located nearby.

**Part 6 – Additional Local Provisions**

**Clause 6.1 – Acid Sulfate Soils**

38. The subject site is not shown as being affected by acid sulfate soils as identified on the Acid Sulfate Soil Map.

**Clause 6.2 – Earthworks**

39. The proposed modification does not result in any additional earthworks.

**Clause 6.3 – Flood Planning**

40. The subject site has not been identified as a flood planning area on the Flood Planning Maps.

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

41. A BASIX Certificate was not required for this development.



## State Environmental Planning Policy (Infrastructure) 2007

42. Clause 104(3) of the Infrastructure SEPP states the following:

*“Before determining a DA for development that has a direct vehicular or pedestrian access within 90m of a connection to a classified road, the consent authority must:*

- *Give written notice of the application to the RTA within 7 days after the application is made, and*
- *Take into consideration:*
  - a. *Any submissions that the RTA provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, the RTA advises that it will not be making a submission), and*
  - b. *The accessibility of the site concerned, including;*
    - i. *The efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
    - ii. *The potential to minimise the need for travel by car and to maximise movement of freight in containers of bulk freight by rail, and*
    - iii. *Any potential traffic safety, road congestion or parking implications of the development.”*

43. The application was referred to the Roads and Maritime Service in accordance with this clause. The RMS raised no objection and asked Council to consider installing ‘No Stopping’ signs from King Georges Road to the McDonalds entry driveway. This issue has been addressed under C125 of this report.

## Deemed State Environmental Planning Policy – Georges River Catchment

44. All stormwater from the proposed development can be treated in accordance with Council’s Water Management Policy and would satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment

***(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and***

45. A Planning Proposal for the New City Plan to amend Kogarah LEP 2012 is on exhibition from Monday 30 March 2015 until Friday 29 May 2015.

46. The New City Plan includes changes to zoning and the introduction of development standards in parts of the City to deliver a range of new housing options.

47. Specifically, the New City Plan proposes to incorporate height and FSR controls, whilst there are no provisions to change the zoning of the site

48. The proposal is not inconsistent with the objectives and standards with the New City Plan.

49. There are no other draft planning instruments that are applicable to this site.

**(iii) any development control plan,**

**Kogarah Development Control Plan 2013 (KDCP 2013)**

50. The Development Control Plan has no controls in relation to hours of operation of restaurants in the Local Centre Business zone.

**(iv) any matters prescribed by the regulations, that apply to the land to which the development application relates,**

51. Not applicable.

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

52. The proposed development as modified is of a scale and character that is in keeping with other development constructed in the locality. Accordingly, the proposal is not considered to have a significant impact on the natural and built environment of the locality.

**(c) the suitability of the site for the development,**

53. It is considered that the proposed development as modified is of a scale and design that is suitable for the site having regard to its size and shape, its topography, vegetation and relationship to adjoining developments.

**(d) any submissions made in accordance with this Act or the regulations,**

54. In accordance with the provisions of Section A2 – Public Notification of KDCP 2013 the application was advertised and placed on neighbour notification for a period of fourteen (14) days. Adjoining property owners were notified in writing of the proposal and invited to comment. Ten (10) submissions were received raising the following concerns:

**Issue 1 – 24 Hour Operation**

55. All submissions raised concerns to the proposed 24 hour trading of the McDonalds restaurant. Consequently, other concerns raised by residents including, litter, anti-social behaviour, noise and increased traffic stemmed from the concerns relating to the 24hr operation of the restaurant.

Comment:

56. As discussed above, having regard to the comments from the Police and RMS, it is considered that the extension of trading hours can be managed and will be acceptable in the locality based on compliance with the Plan of Management and recommendations of NSW Police. To ensure compliance with these requirements it is proposed that the additional hours be approved as a reviewable condition allowing Council to review the additional hours if a number of complaints are received and found to be valid. The reviewable condition will be valid for the life of the consent.

**Issue 2 – Anti-social behaviour from Patrons**

57. Concern is raised by residents that an extension to the trading hours of the premise will further exacerbate anti-social behaviours (eg/ hooning, loitering, revving cars, vandalism, littering) already experienced as a result of McDonalds current operation.

Comment:

58. The application was referred to the NSW Police for assessment and comment, as discussed above in detail and subject to the implementation of their suggestions no objection is raised to the application. In addition to this, Council's Environmental Officers believe that the amenity issues can be managed so as to limit any impact on amenity and recommended a 12 month trial period. As discussed in the report above, a reviewable condition on the additional hours is proposed.

**Issue 3 – Noise**

59. Concern is raised by residents that an extension to the trading hours of the premise will further exacerbate the noise which emanates from customers loitering in the car park and late night vehicle movement along the local roads.

Comment:

60. Noise outside the building of patrons leaving McDonalds is difficult to control, however it is considered that implementation of appropriate security measures, including site security patrols, would minimise the likely impact on surrounding residents. Again possible impacts can be assessed and, if found unacceptable, the reviewable condition would allow for mitigation of those impacts.

**Issue 4 – Traffic and Parking**

61. The availability of on-street parking and increased traffic movements along Greenacre Road, Mimosa Street and Connells Point Road was raised as a matter of concern. It is considered that 24 hour trading of the premise would increase traffic along local roads at the early hours of the morning when the amenity of the residential neighbourhood should be maintained.

Comment:

62. This matter has been previously discussed in the report and considered to be acceptable subject to the implementation of the Plan of Management and proposed reviewable condition on hours of use.

**Mediation/Public Meeting**

63. There were no meetings held with the objectors as it was clear that the residents did not support a 24 hour operation, which is the basis of the application.

**(e) *the public interest.***

64. The proposed development as modified is of a scale and character that does not conflict with the public interest.

**Conclusion**

65. The application has been assessed having regard to the provisions of Section 96(2) and Section 79C (1) of the Environmental Planning and Assessment Act 1979, the provisions of KLEP 2012 and KDCP 2013.
66. Having regard to the above, it is considered that the modifications would result in a development that is substantially the same as that originally approved. Accordingly, the proposed modification can be supported, subject to the imposition of a reviewable condition for the extended hours of operation, outside of the existing approved operating hours and the amendment of a number of existing conditions as detailed below:

**Condition 1A and 41A to be added.**

**1A. Reviewable Condition - Hours of Operation**

The hours of operation are approved as follows:

- a) The core hours of operation of the premises shall be limited to the following;

Restaurant

Sunday to Thursday: 5:00am – 10:00pm

Friday & Saturday: 5:00am – 12:00 Midnight

Drive Through:

Monday to Sunday: 5:00am – 12:00 Midnight

- b) Notwithstanding (a) above, the use may operate with extended hours of operation as follows;

Restaurant

Sunday to Thursday: 10:00pm – 5:00am

Friday & Saturday: 12:00 Midnight – 5:00am

Drive Through:  
Monday to Sunday: 12:00 Midnight – 5:00am

The extended hours of operation may be reviewed by Council at any time, subject to the operator of the premises being given twenty one (21) days written notice that a review of the extended hours of operation will take place. In that time the operator may submit to Council any information they wish to be considered in support of the extended hours of operation.

- c) Any review of the extended hours of operation in (b) above by Council will be based on, among other things, the performance of the operator in relation to the compliance with the development consent conditions, any substantiated complaints received and any views expressed during public consultation or from other stakeholders including the Police.
- d) Following a review, Council may allow the use to continue to operate for the hours specified in (b) above, require the use to revert to the core hours of operation specified in (a) above or otherwise modify the condition as considered appropriate.
- e) The purpose of the reviewable condition is to allow ongoing assessment of the hours of operation in relation to neighbourhood amenity, public safety and operational performance and allow management to demonstrate successful practices in relation to the above.

#### **(41A) NSW Police**

The development shall be carried out having regard to the recommendations of the NSW Police with respect to crime prevention and safety as specified in their letter dated 8 October 2015. A copy of the recommendations made by the NSW Police is attached to this consent.

#### **Conditions 7, 15, 38 and 41 to be modified.**

##### **(7) Acoustic Report**

The noise attenuation measures recommended in the Acoustic report prepared by Atkins Acoustics & Associates Pty Ltd dated March 2016 Rev 03 shall be complied with.

##### **(15) Plan of Management**

At all times the operation of the restaurant must comply with the procedures and processes as outlined in the Plan of Management prepared for McDonalds South Hurstville dated March 2016 and submitted with Section 96 application dated 15 September 2015 and submitted with Development Application No. 103/13.

**(38) Restricted Parking**

Car parking in spaces No. 1 to No. 7 adjacent to the Greenacre Road frontage are not to be used after 10pm on any day and are not to be made available to patrons till 5:00am the following day. An appropriate barrier shall be installed during those times.

**(41) Restricted Access**

To restrict unauthorised access (other than for employees) to the site the entry and exit gates to the carpark shall be closed and locked a maximum of 30 minutes after close and a maximum of 30 minutes before opening, where the premises do not operate at 24 hours per day.

**Advisory Note (vi) to be deleted.**

**(vi) NSW Police**

The development shall be carried out having regard to the recommendations of the NSW Police with respect to crime prevention and safety as specified in their letter dated 21 August 2013. A copy of the recommendations made by the NSW Police is attached to this consent.

**Attachments**

1. A4 Set of Plans

## Recommendation

### Specific Development Conditions

#### **SECTION A – General Conditions**

The conditions that follow in this Section A of the Notice of Determination are general conditions which are imposed to ensure that the development is carried out in accordance with the development consent.

#### **(1) Approved Plans of Consent**

The development must be implemented in accordance with the approved plans, specifications and details listed below and any supporting information submitted with the Development Application except as amended by any conditions attached to the Development Consent:

- (i) Architectural plans drawing numbers A001, A002, A020, A100, A200, A201, A202, A203, D100 Revision B, drawn by Richmond and Ross dated March 2013 and stamped by Council on 11.07.2013.

#### **(1A) Reviewable Condition - Hours of Operation**

The hours of operation are approved as follows:

- a) The core hours of operation of the premises shall be limited to the following;

Restaurant

Sunday to Thursday: 5:00am – 10:00pm

Friday & Saturday: 5:00am – 12:00 Midnight

Drive Through:

Monday to Sunday: 5:00am – 12:00 Midnight

- b) Notwithstanding (a) above, the use may operate with extended hours of operation as follows;

Restaurant

Sunday to Thursday: 10:00pm – 5:00am

Friday & Saturday: 12:00 Midnight – 5:00am

Drive Through:

Monday to Sunday: 12:00 Midnight – 5:00am

The extended hours of operation may be reviewed by Council at any time, subject to the operator of the premises being given twenty one (21) days written notice that a review of the extended hours of operation will take place. In that time the operator may submit to Council any information they wish to be considered in support of the extended hours of operation.

- c) Any review of the extended hours of operation in (b) above by Council will be based on, among other things, the performance of the operator in relation to the compliance with the development consent conditions, any substantiated complaints received and any views expressed during public consultation or from other stakeholders including the Police.
- d) Following a review, Council may allow the use to continue to operate for the hours specified in (b) above, require the use to revert to the core hours of operation specified in (a) above or otherwise modify the condition as considered appropriate.
- e) The purpose of the reviewable condition is to allow ongoing assessment of the hours of operation in relation to neighbourhood amenity, public safety and operational performance and allow management to demonstrate successful practices in relation to the above.

**(ADDED - Modification Ref No: 103/2016/2 – Date of Approval )**

**SECTION B – Prior to the Issue of a Construction Certificate Conditions**

The conditions that follow in this Section B of the Notice of Determination relate to the payment of fees, amendments being made to the proposal, further investigation being undertaken or the preparation of documentation that must be complied with prior to the issue of a Construction Certificate.

Note: A copy of the Construction Certificate shall be forwarded to Council prior to commencement of construction where Council is not the certifier who issued the Construction Certificate.

**(2) Asset & Building Fees**

Payment of the following amounts as detailed below:

<input type="checkbox"/>	Restoration Deposit of	\$3,800.00
<input type="checkbox"/>	*Builders Long Service Levy of	\$2,810.00
<input type="checkbox"/>	Driveway and Restoration Works Design Inspection Fee of	\$ 750.00
<input type="checkbox"/>	Asset Inspection Fee of	\$ 105.00

\*Note: The Builders Long Service Levy quoted is based on the market value of the proposed building works and the Levy Rate applicable at the time of assessing the Development Application and may be subject to change prior to payment.

**(3) Soil and Water Management**

A Soil and Water Management Control Plan, incorporating contour levels and prepared in accordance with Environmental Site Management Policy shall be submitted to Council detailing all measures to control soil erosion and sedimentation runoff from the site during excavation and construction activities.



#### **(4) Certification of Food Premises**

To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation areas all building work in connection with the occupation or use of the premises intended for the preparation and storage of food shall be designed and implemented in accordance with the requirements of:-

- a) Food Act 2003;
- b) Food Regulation 2010;
- c) Food Safety Standards 3.1.1, 3.2.2 and 3.2.3;
- d) Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises);
- e) Sydney Water Corporation;
- f) Australian Standard AS 1668 Part 1 – 1991;
- g) Australian Standard AS 1668 Part 2 – 1991;
- h) The Building Code of Australia.

Certification to this effect shall be provided by an appropriately qualified person.

#### **(5) Grease Trap**

To ensure that adequate provision is made for the treatment of waste water from the premises, floor plans accompanying the Construction Certificate application shall include provision for a Sydney Water approved grease trap. The grease trap installation shall also comply with the requirements of Australian Standard AS 3500 National Plumbing & Drainage Code and be capable of servicing all commercial sections of the development.

Certification from Sydney Water granting approval to the connection shall also be provided.

#### **(6) Sydney Water (DA Only)**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Building Developing and plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating or telephone 13 20 92.

**(7) Acoustic Report**

The noise attenuation measures recommended in the Acoustic report prepared by Atkins Acoustics & Associates Pty Ltd dated March 2016 Rev 03 shall be complied with.

**(MODIFIED - Modification Ref No: 103/2016/2 – Date of Approval )**

**(8) Deliveries**

A delivery management plan is to be submitted to and approved by the Principal Certifying Authority, indicating the times of deliveries and the process/procedure involved with deliveries. A copy of this plan is to be forwarded to Council, where Council is not the PCA.

**(9) Construction Management**

A Construction Management Plan shall be submitted to the PCA detailing the construction process so as to minimise the impact on parking and access. A copy of this plan is to be forwarded to Council, where Council is not the PCA.

**SECTION C – Prior to Commencement of Construction Conditions**

The conditions that follow in this Section C of the Notice of Determination are specific to the proposed development and must be complied with prior to the commencement of construction on the site.

**(10) Certification by Mechanical Engineer**

To ensure that adequate provision is made for ventilation of the building, mechanical and /or natural ventilation shall be provided. These systems shall be designed in accordance with the provisions of:-

- a) The Building Code of Australia;
- b) Australian Standard AS 1668 Part 1 - 1991;
- c) Australian Standard AS 1668 Part 2 - 1991;
- d) Australian Standard 3666.1 - 2002;
- e) Australian Standard 3666.2 - 2002;
- f) Australian Standard 3666.3 - 2000.

Details of all mechanical and /or natural ventilation systems, along with specific certification, provided by an appropriately qualified person, verifying compliance with the abovementioned requirements.

**(11) Structural Engineer's Details**

Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns & other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works.

A copy shall be forwarded to Council where Council is not the PCA.

**(12) Driveway**

In respect to vehicular access to the proposed development the gutter crossing and driveway are to be reconstructed between the kerb and street alignment to Council's specifications.

In this regard a separate driveway application is to be lodged with Council for works outside the property boundary. Furthermore the design boundary level is to be received from Council prior to construction of the internal driveway.

**(13) Council Infrastructure Inspection**

Prior to the commencement of any works an authorised representative of the applicant is to organise and attend a meeting on site with Council's Infrastructure Compliance Co-ordinator to discuss protection of Council's infrastructure. To organise this meeting contact Council's Customer Service Centre on 9330 9400.

**(14) Public Liability Insurance**

All nominated contractors / applicants carrying out driveway and/or restoration works on Council property must carry public liability insurance with a minimum cover of twenty million dollars (\$20,000,000.00). In this regard, prior to commencement of works, the principal contractor is to lodge an "Application for the Construction of Work by Private Contractor" to Council, which includes submitting evidence of their current insurance. The principal contractor must ensure that sub-contractors are also adequately insured.

**SECTION D – Construction and Operational Conditions**

The conditions that follow in this Section D of the Notice of Determination are imposed to ensure the development is constructed and operates having regard to relevant legislation and does not unreasonably impact on the amenity of the locality or environment during the construction phase or the operation of the use.

**(15) Plan of Management**

At all times the operation of the restaurant must comply with the procedures and processes as outlined in the Plan of Management prepared for McDonalds South Hurstville dated March 2016 and submitted with Section 96 application dated 15 September 2015 and submitted with Development Application No. 103/13.

**(MODIFIED - Modification Ref No: 103/2016/2 – Date of Approval )**

## **(16) Waste Management**

At all times the operation of the restaurant must comply with the strategies and measures as outlined in the Waste Management Strategy – Litter Management report prepared for McDonalds South Hurstville dated 25 September 2013 and the standard Litter Patrol Tool Kit prepared for McDonalds and submitted with Development Application No. 103/13.

## **(17) Impact of Noise**

The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background  $L_{A90, 15min}$  noise level, measured in the absence of the noise source/s under consideration by 5dB(A). The source noise level shall be assessed as an  $L_{Aeq, 15min}$  and adjusted in accordance with the NSW Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

## **(18) Health and Public Nuisance**

The use of the premises shall not give rise to an environmental health nuisance to the adjoining or nearby premises and environment.

There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the Protection of the Environment Operations Act 1997 and Regulations.

The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage other premises.

## **(19) Inspections**

The following lists of inspections are the MANDATORY CRITICAL STAGE INSPECTIONS that MUST be carried out by the Principal Certifying Authority (PCA).

- (a) at the commencement of building works
- (b) after excavation for, and prior to the placement of, any footings, and
- (c) prior to pouring any in-situ reinforced concrete building element, and
- (d) prior to the covering of the framework for any floor, wall, roof or other building element, and
- (e) prior to covering waterproofing in any wet areas, and
- (f) prior to covering any stormwater drainage connections, and
- (g) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Certificates from your engineer or subcontractor are NOT acceptable in the first instance for the above inspections. Failure to have your PCA carry out these inspections could result in a delay or refusal to issue an Occupation Certificate.

**(20) Storage of materials on Public Road**

All building materials or waste containers must be stored within the confines of the site. The storage of such building materials, waste containers or equipment associated with the project upon the public roadway, including the pedestrian footway or unpaved verge, is prohibited.

**(21) Health and Public Nuisance**

The use of the premises shall not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the Protection of the Environment Operations Act 1997 and Regulations. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage other premises.

**(22) Use of Crane on Public Road**

Prior approval must be obtained from Council a minimum of twenty four (24) hours before the use on any site of a crane, hoist or similar machinery that will be used to transfer materials across Council's footpath. This includes cranes that are situated on roadways, footpaths and road reserves.

Any application for approval must be accompanied by the following information:-

- Site sketch indicating the proposed location of the crane, pedestrian controls and traffic controls;
- A copy of current public liability insurance indemnifying Council in the event of an incident;
- A copy of an RMS accredited traffic control plan;
- A copy of current public liability insurance with minimum cover of twenty million dollars (\$20,000,000) indemnifying Council in the event of an incident;
- Proof that the Local Area Command of the NSW Police have been advised of the proposal.

The use of a crane, hoist or similar machinery on any site without prior approval is prohibited.

**(23) Stormwater to Kerb**

Any stormwater connections to the kerb and gutter are to be in accordance with Kogarah Council's 'Specification for Construction by Private Contractors'.

**(24) Redundant Driveway**

All existing vehicular crossings adjacent to the subject premises that have become redundant shall be removed and the footway and kerb and gutter reinstated at the developer/applicants expense.

**(25) Work within Road Reserve**

A Development Consent or any related Construction Certificate does not allow for any form of road or footpath opening to be made external to the subject property boundary. Should such an opening be required a separate approval under S138 of the Road Act 1993 must be granted by Council prior to the commencement of any works within the road reserve. Applications may be made at Council's Customer Service Centre.

**(26) Damage within Road Reserve & Council Assets**

The applicant shall bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.

**(27) Public Utility & Telecommunication Assets**

The applicant shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines and cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.

**(28) Roof Water**

All roof and surface water is to be connected to an approved drainage disposal system.

**(29) Loading/Unloading Operations**

Loading and unloading operations shall be confined within the property and within any defined loading areas indicated on the approved plans.

**(30) Hours of Operation**

The hours of operation shall be limited to the following:-

Restaurant

Sunday to Thursday: 5:00am – 10:00pm  
Friday & Saturday: 5:00am – 12:00 Midnight

Drive Through:

Monday to Sunday: 5:00am – 12:00 Midnight

**(31) No Offensive Noise**

To minimise the noise impact on the surrounding environment, the use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to “offensive noise” as defined under the provisions of the Protection of the Environment Operations Act 1997.

**(32) Hours of Construction**

Construction may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday.

**(33) Provision of Amenities**

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one (1) toilet for every twenty (20) persons or part of twenty (20) persons employed at the site or as specified by Workcover requirements.

- each toilet provided must be a standard flushing toilet and must be connected:
- to a public sewer; or
- if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council; or
- if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities must be completed before any other work is commenced.

**(34) Heart Healthy Oils**

To minimise the risk of cardiovascular disease to the community, cooking oils containing trans and saturated fats oils shall not be used when preparing or cooking food.

To verify that oils containing trans and saturated fats are not being used, Council Environmental Health Officers will conduct random inspections as part of their routine food inspection program, and sample cooking oils and other food products for testing purposes.

**(35) Avoid Annoyance from lighting**

Any lighting of the premises shall be installed in accordance with Australian Standard AS 4282 – 1997: Control of the Obtrusive Effects of Outdoor Lighting so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. Flashing, moving or intermittent lights or signs are prohibited. The intensity, colour or hours of illumination of the lights shall be varied at Council’s discretion if Council considers there to be adverse affects on the amenity of the area.

**(36) General Amenity**

There shall be no emissions or any other forms of pollutants from the premises, which will give rise to an offence under The Protection of the Environment Operations Act 1997 and Regulations.

**(37) Allocation of Car Parking Spaces**

A minimum of twenty one (21) off street car parking spaces shall be constructed, drained, marked and maintained at all times in accordance with the approved plans.

**(38) Restricted Parking**

Car parking in spaces No. 1 to No. 7 adjacent to the Greenacre Road frontage are not to be used after 10pm on any day and are not to be made available to patrons till 5:00am the following day. An appropriate barrier shall be installed during those times.

**(MODIFIED - Modification Ref No: 103/2016/2 – Date of Approval )**

**(39) Waste Removal and Deliveries**

Waste removal, deliveries of food products and the like are restricted to:

Monday to Saturday: 10:00am – 3:00pm

**(40) Closed Circuit Television System (CCTV)**

A closed circuit television system (CCTV) which complies with AS 4806:2006 must be installed and include a minimum of two (2) cameras being mounted outside to monitor the carpark and front entry/egress points.

**(41) Restricted Access**

To restrict unauthorised access (other than for employees) to the site the entry and exit gates to the carpark shall be closed and locked a maximum of 30 minutes after close and a maximum of 30 minutes before opening, where the premises do not operate at 24 hours per day.

**(MODIFIED - Modification Ref No: 103/2016/2 – Date of Approval )**

**(41A) NSW Police**

The development shall be carried out having regard to the recommendations of the NSW Police with respect to crime prevention and safety as specified in their letter dated 8 October 2015. A copy of the recommendations made by the NSW Police is attached to this consent.

**(ADDED - Modification Ref No: 103/2016/2 – Date of Approval )**



#### **(42) Amenity of Surrounding Neighbourhood**

The implementation of the development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

#### **SECTION E – Prior to Occupation or Subdivision Certificate Conditions**

The conditions that follow in this Section E of the Notice of Determination relate to conditions that ensure that the development is completed in accordance with the requirements of the Development Consent prior to the issue of either an Occupation Certificate or a Subdivision Certificate.

#### **(43) Odour**

To ensure that adequate provision is made for the treatment of odours, suitable odour control equipment shall be fitted to the mechanical exhaust system within the development. This equipment shall be capable of enabling the operation of the exhaust system free from the emission of offensive odours from the premises as defined under the Protection of the Environment Operations Act 1997.

#### **SECTION F – Prescribed Conditions**

The following are prescribed conditions of development consent pursuant to s.80A(11) of the Environmental Planning and Assessment Act 1979 and cl.98 of the Environmental Planning and Assessment Regulation 2000.

#### **(44) Compliance with the Building Code of Australia**

The development must be carried out in accordance with the provisions of the Building Code of Australia.

#### **(45) Erection of Signs**

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the work site is prohibited.

The sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

#### **(46) Notification Requirements (Other)**

In relation to non-residential work, prior to the commencement of construction the Principal Certifying Authority must be informed in writing of:-

- (i) the name and contractor licence number of the licensee who has contracted to do or intends to do the work;
- (ii) the name and permit number of the owner-builder who intends to do the work, with a copy of the permit submitted; and
- (iii) the date of their intention to commence the erection of the building.

Further, if a contract is entered into for the work to be done by a different licensee or arrangement for doing the work are otherwise changed, the Principal Certifying Authority is to be immediately informed in writing of sufficient particulars for it to update its records.

#### **(47) Shoring and Adequacy of Adjoining Property**

If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (a) protect and support the adjoining premises from possible damage from the excavation, and
- (b) where necessary, underpin the adjoining premises to prevent any such damage.

The above condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

#### **(48) Council Notification of Construction**

The erection of a building which is the subject of a Development Consent must not be commenced until:

- a) Detailed plans and specifications of the building have been endorsed with a construction certificate by Council or an accredited certifier.
- b) the person having the benefit of the development consent has:
  - appointed a Principal Certifying Authority (PCA), and
  - notified Council (if Council is not the PCA) in writing of the appointment, and
  - given at least 2 days notice to Council of their intention to commence the erection of the building. The notice may be in writing or by phone.

## **SECTION G – Demolition Conditions**

The following conditions are imposed to ensure the demolition associated with the proposed development is carried out having regard to relevant legislation and does not unreasonably impact on the amenity of the locality or environment.

Nil.

## **END CONDITIONS**

## **SECTION H – Advisory Notes**

### **(i) Worksite Safety**

It is usually the owner/applicant's responsibility to ensure that the development site is a safe working environment. This may be by the engagement of an appropriately competent principal contractor. There are various legislative and WorkCover requirements with respect to maintaining a safe work-site. Details of these requirements and legislation, as well as, guidance and advisory material, can be found on the WorkCover Website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

### **(ii) Worksite Safety Scaffolding**

Council is committed to worksite safety and requiring that all scaffolding is installed by competent and qualified professionals with the relative appropriate standards. The applicable Australian Standards for the scaffolding is AS/NZS1576 in respect of the design of the scaffolding and AS/NZS4576 with respect to the erection of the scaffolding. Also, you should ensure that those erecting scaffolding are appropriately qualified and have the appropriate qualifications to erect scaffolding. For further information regarding this please see [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

### **(iii) Dial Before You Dig**

Underground pipes and cables may exist in the area. In your own interest and for safety, telephone 1100 before excavation or erection of structures. Information on the location of underground pipes and cables can also be obtained by fax on 1300 652 077 or through the following website [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au).

### **(iv) Discrimination Act**

This authorisation does not imply that the proposal complies with Disability Discrimination Act 1992. The Proponent is responsible to ensure compliance with this and other anti-discrimination legislation. The Disability Discrimination Act 1992 covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS 1428.1 – Design for Access and Mobility. AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under The Disability Discrimination Act 1992.

**(v) Demolition Waste**

Sorting your construction and demolition waste will save you money. For pricing and disposal options for sorted loads of tiles, bricks, timber concrete or asphalt call Waste Service NSW on 1300 651 116.

**(vi) NSW Police**

**(DELETED - Modification Ref No: 103/2016/2 – Date of Approval )**