

Modification – Trading Hours

DA0296_2019 – Unit 3 160 Church Street Mudgee

Client: Stuart Faulkner

Date: 24 January 2022

[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]

©Eight Mile Planning 2022

This publication is subject to copyright. Except as permitted under the Copyright Act 1968, no part of it may in any form or by any means (electronic, mechanical, photocopying, recording or otherwise) be reproduced, stored in a retrieval system or transmitted without prior written permission.

Document Status

Date Issued	Revision	Status
15/12/21	V1 Preliminary Draft	Client Review
24/01/22	V1.1	Final

Contents

1.	INTRODUCTION	3
	Trading hours generally	4
	Existing approval	4
2.	MODIFICATION	5
3.	ASSESSMENT	7
3.1	Environmental planning instruments	8
4.	CONCLUSION	9
 TABLES		
Table 1	Application details	3
Table 2	Accompanying documentation	4
Table 3	Matters for Consideration 4.15	7
Table 4	Consistency with Relevant SEPPS	8
 APPENDICES		
A	Consent	
B	Floor Plan	
Uploaded to the Planning Portal under separate cover		

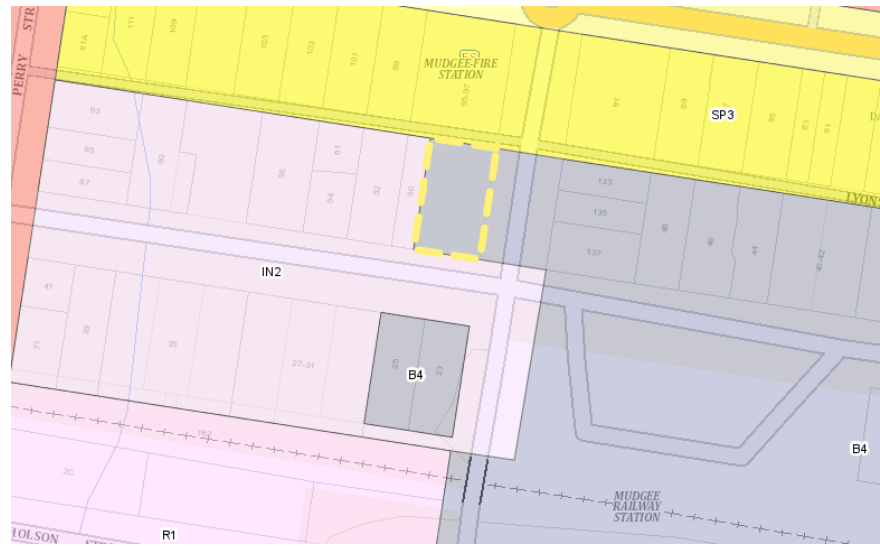
1. Introduction

Eight Mile Planning has been engaged to prepare this planning report to accompany a modification application to support a proposed amendment to **trading hours** under the approved Development Consent DA0296_2019 (the Consent). The application is made pursuant to Part 4 under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EPAA).

The Consent was granted on 23 July 2019 by the council for a change of use retail premises.

The SEE has been prepared in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the *Environmental Planning and Assessment Regulation 2000* (EP&A Reg).

Table 1 Application details

Proposed Modification	Change of trading hours -from 7am-7pm to 24 hours.
Current Consent	Development Application DA0296/2019 – Change of Use – Retail Premises approved 23 July 2019
Type of approval	Modification pursuant to section 4.55(1A) EP&A Act 1979
Real Property description	Lot 123 DP 830463 The Bridge Complex 160 Church Street Mudgee
Location/Zone	
Owner	Estate of Ray Williamson
Applicant	Eight Mile Planning

The SEE is based on and to be read in conjunction with the accompanying documentation listed below. Note: **Appendices uploaded to NSW Planning Portal under separate cover.**

Table 2 Accompanying documentation

Document	Prepared by	Date	Appendix
Development Consent	MWRC	23/7/19	Appendix A
Floor Plan	Liv Johnson Designs	12/1/22	Appendix B

Trading hours generally

As part of the NSW Government COVID 19 response, the Minister for Planning, Industry and Environment has made *the Environmental Planning and Assessment (COVID-19 Development—Extended Operation) Order 2020* under section 10.17 of the *Environmental Planning and Assessment Act 1979*, the operation of which provides for unlimited trading hours for retail premises (including food and drink premises) until 22 March 2022.

Further, the Department of Planning, Industry and Environment (DPIE) have launched a Building Business Back Better initiative. The work being undertaken includes amendments to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). One of the policy changes that has been introduced is the introduction of standard hours of operation from 7am to 10pm, in circumstances where a consent condition does not explicitly apply hours of operation¹ in certain business and industrial zones. The changes are due to commence in February, 2022 and would allow, in this instance, the laundromat to operate from 7am-10pm under the Codes SEPP as Complying Development.

Existing approval

Council issued a Development Consent 23 July 2019 for the following: Change of Use – retail premises – shop and ancillary workshop and business identification signage. The Development Consent related to Lot 123 DP 830463, The Bridge Complex, 160 Church St Mudgee. The development consent is not limited to Unit 3 (as may be implied) and makes explicit reference to the hours of operation for the dance studio uses but no other operational restrictions. Refer condition 10 (below).

10. The approved hours of operation for the indoor recreation facility – dance studio are:

- 6am – 11pm Monday – Friday;
- 6am – 9pm Saturday;
- 10am – 6pm Sunday.

¹ DPIE, Building Business Back Better , Explanation of Intended Effect, March 2021. Refer also <https://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-reforms/Complying-Development-Reforms/Land-use-and-business-agility>

2. Modification

The site is an approved commercial building known as The Bridge Complex , 160 Church Street Mudgee. The complex is occupied by a number of commercial premises including a dance studio and hairdressing salon. The site is in a B4 Mixed Use zone and adjoins an Industrial zone to the west.

The site is in the process of changing use from a shop to a laundromat as exempt development under the Codes SEPP which will be bound by the hours of operation from 7am – 7pm.

The proposal has been considered in the context of the *State Environmental Planning Policy (Exempt and Complying Development Codes (Codes SEPP))* and it is noted that the proposal satisfies the requirements for a change of use as exempt development under the Code SEPP while the hours are limited to 7 am – 7 pm. A DA is therefore required to enable the extended hours.

The modification, therefore, relates only to the expansion of condition 10 to explicitly allow 24 hour operation for a laundromat in unit 3. It is intended that, the consent would clarify that, should the premises again change use, the hours of operation would revert to 7am – 7 pm.

The Tumble Club currently operate two sites in the Newcastle area on 24 hour terms without the burden of any adverse impact on the amenity of the surrounding land uses. The business operates on a digital platform with no coin or cash operation available, therefore no cash on premises.

CCTV will offer 24 hour surveillance of the premise and in doing so will, by proximity, also improved the security of the other business premises within The Bridge Complex.

Proposed condition

The following wording has been drafted for consideration by Council.

Condition 10

Omit

10. The approved hours of operation for the indoor recreation facility – dance studio are:

- 6am – 11pm Monday – Friday;
- 6am – 9pm Saturday;
- 10am – 6pm Sunday.

Insert instead the following (or similar)

10. The hours of operation for development within The Bridge Complex shall be as follows:

Use	Hours
Commercial Premises	7.00 am to 7.00 pm Monday to Saturday and 9.00 am to 6.00 pm on a Sunday or a public holiday.
Dance Studio Unit 2	6.00 am – 11.00 pm Monday – Friday 6.00 am – 9.00 pm Saturday 10.00 am – 6.00pm Sunday
Laundromat Unit 3	24 hour operation Monday – Sunday including public holidays

It is intended that, should Unit 3 revert to another commercial use other than a laundromat, the hours would also revert to those of a typical commercial premises. It is not intended that all future uses of Unit 3 would enjoy 24 hour operation.

2.3 Test for modification

Section 4.55 provides that:

(1A) Modifications involving minimal environmental impact

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**, and*

(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), and

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(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, and

(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.

Subsections (1), (2) and (5) do not apply to such a modification.

There have been numerous Land and Environment Court decisions which consider the meaning of 'substantially the same' for the purposes of this threshold test. It is necessary to consider whether the modified development will be 'essentially or materially the same as the currently approved development,¹² or 'have the same essence.'¹³ The comparison between the original development and the modified development 'involves an appreciation, qualitative, as well as quantitative, of the developments being compared.'¹⁴

Section 4.55(1A) provides that a modification may be made in circumstances where 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 proposed modification satisfies this test, and the modification is in essence the same development.

² *Moto Projects No. 2 v North Sydney Council* (1999) 106 LGERA 289.

³ *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8.

⁴ *Moto Projects No. 2*.

3. Assessment

The following section provides an assessment of the proposed development against the relevant matters for consideration under section 4.15 of the *Environmental Planning and Assessment Act 1979* (EPA Act).

Table 3 Matters for Consideration 4.15

EP&A Act section and legislative requirement	Comment
(1) Matters for consideration—general In determining a development 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: The provision of:	
(i) any environmental planning instrument	The Mid-Western Local Environment Plan (MWLEP) and relevant SEPPs have been considered in section 3.1. below.
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent	Draft Code SEPP EIE Building Business Back Better (refer below)
(iii) any development control plan	The Mid-Western Development Control Plan 2013 does not include any specific requirements in relation to hours of operation of business premises.
(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4	Not Applicable
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)	This DA is considered to satisfactorily meet the relevant requirements of the EP&A Regulations relating to development applications
(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	<p>Consideration has been given to the likely impacts of the development.</p> <p>The extended hours are unlikely to result in an impact on the amenity. The dance studio in the adjoining unit currently operates until 11pm.</p> <p>The site is adjacent to McDonalds which enjoys 24 hour operation and the Fire Station which likewise operates 24 hours.</p> <p>The site is an existing business premises in a business zone and adjoins an industrial zone to the rear.</p> <p>Patrons will typically drop their washing off and return an hour later to collect it. Alternatively, provision will be made for waiting.</p> <p>Security of the premises and safety of the patrons and surrounding uses is paramount. The business operates on a digital platform with no coin or cash operation available, therefore no cash on premises.</p> <p>CCTV will offer 24 hour surveillance of the premise and in doing so will, by proximity, also improved the security of the other business premises within The Bridge Complex.</p> <p>The use itself 7am-7pm is exempt development.</p>

EP&A Act section and legislative requirement	Comment
(c) the suitability of the site for the development	<p>The proposal is for 24 hour operation of a laundromat which. The change of use from a business premises to business premises is exempt under the Code SEPP.</p> <p>The site is surrounded by uses that are 24 hours and the adjoining studio operates until 11pm.</p> <p>The site is zoned B4 and adjoins an industrial area. There is sufficient parking both on the street and at the rear of the premises.</p> <p>The site can suitably accommodate the extension of hours.</p>
(d) any submissions made in accordance with this Act or the regulations	This is a matter for the Council as consent authority.
(e) the public interest	<p>The proposal will provide a washing facility for the significant proportion of the community who are not availed of facilities at home. More importantly, it provides commercial machines the serve the various self-managed tourist and visitor accommodate providers who service their own properties.</p> <p>NSW Government COVID Response</p> <p>The NSW Government have responded to the pandemic in the Building Business Back Better initiative by the NSW Department of Planning Industry and Environment. This initiative includes the expansion of the Code SEPP to include 24 hour operation of uses in certain employment zones. The Minister has also made Order (in place until March 2022) which relax operating hours for certain retain uses. This the Orders do not explicitly relate the a laundromat, the policy work being undertaken by DPIE does lend itself towards looking at the opportunity to facilitate development of this type in locations such as The Bridge Complex.</p> <p>Supporting local business and providing the convenience of a 24 hour service is in the public interest.</p>

3.1 Environmental planning instruments

State Environmental Planning Policies

The proposed development is not inconsistent with any SEPPs that otherwise apply to all land across the state.

Table 4 Consistency with Relevant SEPPS

SEPP	Assessment
Codes SEPP	<p>The use is consistent with the Exempt Development provisions of the Codes SEPP.</p> <p>The hours require DA.</p>

Building Business Back Better

The site adjoins an industrial zone to the rear. Changes to the Codes SEPP proposed by DPIE the Building Business Back Better Explanation of Intended Effects (March 2021) proposed the extension of operating hours for commercial and industrial uses to 10pm as Complying Development

(Commenced) and inclusion of include 24 hour operation of all land use within industrial zones regardless of consent requirements. Allowing the 24 hour operation as a low impact business such as a laundromat is generally consistent with the current policy approach to provide increased flexibility for small business.

Mid-Western Local Environmental Plan

The *Mid-Western Local Environmental Plan (MWLEP)* is the principle environmental planning instrument applicable to the development.

The proposal has been assessed against the general and relevant requirements of the MWLEP and the proposal will not contravene the controls contained within the plan.

Land Use Zone

The site is currently zoned B4 Mixed Use. The commercial use is permissible and change of use supported under the Codes SEPP.

Current Zone	Comment
B4 Mixed Use	<p>The B4 Mixed Use zone permits business and commercial development. Hours of operation are not a matter for the LEP. The extended hours are not inconsistent with the objectives of the zone:</p> <ul style="list-style-type: none">• <i>To provide a mixture of compatible land uses.</i>• <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>• <i>To ensure a form of development that is consistent with the character of the adjoining residential neighbourhoods.</i> <p>The built form exists. The site adjoins an industrial zone to the rear.</p>

4. Conclusion

This report has been prepared by Eight Mile Planning to support the modification of DA 0296_2019 for the extension of operating hours of Unit 3 (Condition 10).

The proposal has been assessment in accordance with section 4.15 and 4.55(1A) of the EPA Act. The proposal is consistent with the Code SEPP in terms of the land use and the MWLEP.

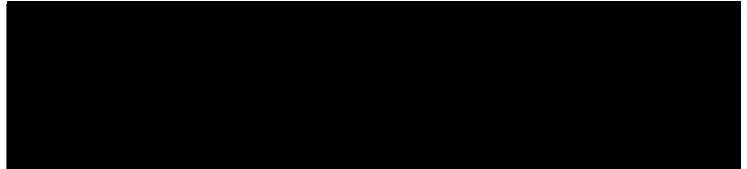
The proposal will ultimately contribute to the economic recovery of Mudgee and support the growth and development of the tourism sector through the provision and availability of a 24 hour laundromat service.

Appendices

- A. Consent
- B. Floor Plan

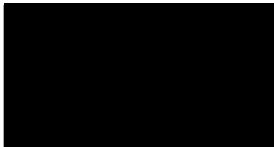
Note: Appendices below have been uploaded to the NSW ePlanning Portal as individual files.

A. Consent



CAmos:cc:DA0296/2019

26 July 2019



Dear Sir,

**DEVELOPMENT APPLICATION DA0296/2019 - CHANGE OF USE – RETAIL PREMISES –
SHOP & ANCILLARY WORKSHOP, AND BUSINESS IDENTIFICATION SIGNAGE
LOT 123 DP 830463 - THE BRIDGE COMPLEX 160 CHURCH STREET MUDGEES NSW
2850**

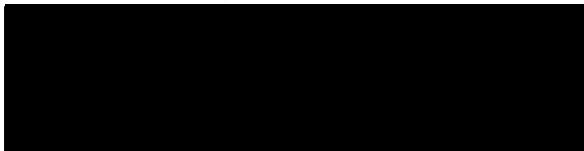
I am pleased to advise that your application has been approved by Council.

Attached is Council's formal Development Consent No. DA0296/2019.

It is important that you read the consent and understand the requirements of any conditions imposed. Certain requirements may need to be satisfied prior to proceeding with the development.

The consent is a legal document and should be kept for your future reference as the development proceeds. It should be noted that commencement of the development implies your acceptance of the conditions of consent.

Should you have any query regarding the consent or associated conditions, do not hesitate to contact myself or the appropriate Council officer.




**LINDSAY DUNSTAN
MANAGER STATUTORY PLANNING
DEVELOPMENT**



Notice of Determination of a Development Application

Issued under the *Environmental Planning and Assessment Act 1979* Section 4.16(1)(a)

Our Ref: C Amos:cc:DA0296/2019 **DA No:** DA0296/2019

Applicant: 	Land to be Developed: Lot 123 DP 830463 The Bridge Complex 160 Church Street MUDGEES NSW 2850
-----------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------

Proposed Development: Change of use – retail premises – shop and ancillary workshop, and business identification signage	Building Code of Australia Classification: 6
------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------

Date of Determination: 23 July 2019
Determination: CONSENT GRANTED subject to conditions set out below

Consent to operate from: 29 July 2019	Consent to lapse on: 29 July 2024
-------------------------------------------------	---------------------------------------------

CONDITIONS

PARAMETRES OF CONSENT

- The development is to be carried out in accordance with the following plans endorsed with Council's Stamp as well as the documentation listed below, except as varied by the conditions listed herein and/or any plan notations.

Title / Name:	Doc Ref:	Rev:	Date:	Prepared by:
Site Plan	-	-	-	Applicant
Floor Plan	-	-	-	Applicant
Signage Plan	-	-	-	Applicant
Signage Plan 2	-	-	-	Applicant

GENERAL

- This development consent provides approval for a change of use – retail premises and business identification signage, only.
- This approval does not provide any indemnity to the owner or applicant under the Disability Discrimination Act 1992 with respect to the provision of access and facilities for people with disabilities.

4. Under clause 93 of the Environmental Planning and Assessment Regulation 2000, the existing building, is to be brought into partial conformity with the following Performance Requirements (PR's) of the BCA, Volume 1.

EP1.2 – In relation to appropriate Fire Extinguishers being installed in the building.

EP4.1, EP4.2 – In relation to identifying the location of required EXITs.

Details of compliance with the abovementioned Performance Requirements of the BCA are to be indicated on amended/additional plans and submitted to the Consent Authority for review prior to Occupation of the building. The matters which are subject to the upgrading are to be prepared by a suitably qualified Building Designer/BCA Certifier.

PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE

5. Prior to the occupation of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the erection of the building.
6. Prior to occupation or the issue of the Occupation Certificate the owner of the building must cause the Principal Certifying Authority to be given a fire safety certificate in accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000 for each measure listed in the schedule. The certificate must only be in the form specified by Clause 174 of the Regulation. A copy of the certificate is to be given to the Commissioner of the New South Wales Fire Brigade and a copy is to be prominently displayed in the building.

ONGOING / OPERATIONAL

7. For every 12 month period after the issue of the Final Fire Safety Certificate the owner/agent of the building must provide the Council and the Commissioner of NSW Fire Brigades with a copy of an Annual Fire Safety Statement Certifying that each specified fire safety measure is capable of performing to its specification.
8. Where any essential services are installed in the building a copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and Council. A further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
9. There being no interference with the amenity of the neighbourhood by reason of the emission of any "offensive noise", vibration, smell, fumes, smoke, vapour, steam, soot, ash or dust, or otherwise as a result of the proposed development.
10. The approved hours of operation for the indoor recreation facility – dance studio are:
 - 6am – 11pm Monday – Friday;
 - 6am – 9pm Saturday;
 - 10am – 6pm Sunday.
11. Staff are to park in Unit 3's allocated space in the rear car park of the complex.
12. All loading/unloading facilities are to be located within the site with no loading to occur from the public road system.

SIGNAGE

13. All signage is to be maintained in good condition at all times.
14. The sign shall not be internally illuminated. Illumination of the sign from an external light source, eg. floodlight, is permitted, provided such floodlight does not create a glare nuisance or distract motor vehicle drivers.

15. The signage is to be securely affixed and is not to flash, move or be objectionably glaring.

16. The approved Business Identification Sign is to only display the name of the business carried out at the premises or the nature of the business carried out at the premises. The signage may include the address of the premises and/or a business logo.

STATEMENT OF REASONS

The determination decision was reached for the following reasons:

1. The proposed development complies with the requirements of the applicable environmental planning instruments and Mid-Western Regional Development Control Plan 2013.
2. The proposed development is considered to be satisfactory in terms of the matters identified in Section 4.15 of the Environmental Planning & Assessment Act 1979.

