

Date: 14th December 2021
Our Ref: 200532
Your Ref: DA2021/0118

General Manager
Richmond Valley Council
Locked Bag 10
CASINO NSW 2470

Dear Sir,

**Re: Section 4.55(2) Application for Development Consent Notice 2021.0118
10 Queen Elizabeth Drive, Coraki**

Section 1

Introduction

Newton Denny Chapelle has been engaged to submit an application to modify Development Consent No. 2021.0118, pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act, 1979.

The objective of the Section 4.55(2) application is to enable:

- The installation and use of a cool room and associated external compressor unit. A wing wall (with a roof over) measuring 1m x 1.8m is proposed to be constructed for acoustic purposes.
- Extension of operating hours. Approved trading hours are Mondays to Sundays inclusive: 6 am to 7 pm. The proposed trading hours are Monday to Friday: 5:30 am to 7:30 pm and Saturday/Sunday: 6:30 am - 7:30 pm.

Section 2

Subject Site

The subject land is located at 10 Queen Elizabeth Drive, Coraki as illustrated in **Plate 1**.

The subject land was granted approval under DA2021.0118 with the development consent approving the following:

Change of use and fit-out of an existing shed as a takeaway food and drink premises, signage and associated works.

The subject land is zoned RU5 Village under the Richmond Valley LEP 2012.



Plate 1: Subject Site

Section 3

Proposed Modification

Since the approval of the development application and operation of the development, the proponent seeks to improve the refrigeration component associated with the take away food and drink premises through the installation of a cool room within the existing building.

The proponent also seeks to increase the approved operating hours. The existing approved trading hours are Mondays to Sundays inclusive: 6 am to 7 pm. The proposed trading hours are Monday to Friday: 5:30 am to 7:30 pm and Saturday/Sunday: 6:30 am - 7:30 pm.

Pre-lodgement discussion with Richmond Valley Council have confirmed that the modification could be lodged via Section 4.55(2) of the EP&A Act 1979.

To support the proposed modification, we enclose an acoustic report prepared by Craig Hill Acoustics dated 2 December 2021. An updated floor plan has also been prepared by Arthur Colledge that details the location of the proposed cool room, the external compressor unit and associated wing wall (and roof over) for acoustic purposes.

Accordingly, this application proposes the following amendments:

- **Modify** Condition no. 1 so as to reference the amended floor plan as follows:

Company	Title	Date
Arthur Colledge	Floor Plan 1 of 6	7/12/2021

- **Modify** Condition no. 6 to enable the trading hours of the take-away food and drink premises to be Monday to Friday: 5:30 am to 7:30 pm and Saturday/Sunday: 6:30 am - 7:30 pm.

Section 4

4.1 Section 4.55(2) EP&A Act 1979

The following provides an assessment of the proposed modified development in accordance with the matters under Section 4.55(2) of the Environmental Planning & Assessment 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

Comment: The proposed amendment is considered to be substantially the same development to which consent was originally issued based on the following grounds;

- The modification retains the same development as originally approved under Development Consent Notice 2021.0118;
- The proposed amendment does not modify the development's consistency with relevant development design standards under the Richmond Valley Development Control Plan;
- Other than the inclusion of the cool room and amended trading hours, no other changes are proposed to the broader framework established by the development consent notice;
- The proposed development will still be serviced by the 4 approved car parking spaces required by Condition no. 10. No additional car parking spaces are required to service the modification.

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: Any required community consultation/notification will be conducted by Council as part of the processing and assessment of this application. Any submissions received concerning the proposal are to be considered by Council as part of its assessment of the application.

4.2 Section 4.15 Evaluation

Pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979, the following assessment is provided with respect to the proposed modification to the development consent. We note that the original application was subject to detailed assessment to determine the suitability of the site for the development. Accordingly, the following focuses specifically on the changes proposed as part of the current S4.55(2) application.

Section 4.15(1)(a) the provisions of:

(i) any environmental planning instrument

Comment: The nature of the current amendment is such that the project is not inconsistent with the zoning framework or other controls within the Richmond Valley Local Environmental Plan 2012 that apply to the site.

(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 authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and;

Comment: No draft EPI is considered to adversely impact the proposed modification to DA 2021.0118.

(iii) any development control plan;

Comment: The modification to enable the inclusion of a cool room and the extension of trading hours is not considered to adversely impact the consistency of the assessment applied to the development under the Richmond Valley Development Control Plan. In this regard, other than those components proposed to be modified, the modification retains the same elements of the approved development.

The proposed development will still be serviced by the 4 approved car parking spaces required by Condition no. 10. No additional car parking spaces are required to service the modification.

(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, and

Comment: The subject land is not known to be the subject of a planning agreement.

(iv) The regulations (to the extent that they prescribe matters for the purposes of this paragraph).

Comment: The subject site is not adversely impacted upon by the provisions of the regulations.

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

Comment: The proposal relates to the installation of a cool room and associated external compressor unit, and also an increase in trading hours.

In regards to the character and amenity of the surrounding area as a result of the proposed modification, we enclose an acoustic report prepared by Craig Hill Acoustics dated 2 December 2021. The acoustic report concludes the following:

"Based on the proposed shielding for the new cold room motors and extended operating hours noise from the subject premises would not exceed the required criteria.

Compliance of kitchen exhaust fan subject to not being operated before 7.30 am in the morning and maintenance of constructed attenuator to be kept in good order."

Given the cool room will be located inside the existing building, no adverse visual impacts are considered to be generated on the character and amenity of the surrounding area as a result of the proposed modification. The modified proposal will continue to be subject to all other applicable environmental related conditions to be retained on the consent notice.

(c) the suitability of the site for the development

The subject land is zoned RU5 – Village and the proposal remains permitted with Council consent. The current amendment to the development consent for the project is not considered to erode the project's suitability for the site. As noted above, the modified proposal will still be subject to the applicable environmental management related conditions to be retained on the consent notice.

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

Any submissions received concerning the proposal are to be considered by Council as part of its assessment of the application.

(e) the public interest

The proposed modification is unlikely to compromise the public interest. In this regard, the proposed modification is supported by an acoustic report prepared by Craig Hill Acoustics.

Conclusion

The Section 4.55(2) report successfully addresses the issues relevant to Council's assessment of the proposed amendment to Development Consent Notice 2021.0118.

The details provided herein address the issues relevant to Council's assessment of this Section 4.55(2) Application to amend the nominated conditions pursuant to Section 115 of the Environmental Planning & Assessment Regulation (2000).

Council can readily conclude the development, as proposed to be modified, is substantially the same as that for which consent was originally granted.

We trust this information is sufficient for your purposes at this stage to permit the approval of the Section 4.55(2) application. However, should you require clarification of any aspect of the content of this letter or need any further information, please do not hesitate contacting Luke Fittock of this office.

Yours sincerely,

NEWTON DENNY CHAPELLE



DAMIAN CHAPELLE
Town Planner BTP. CPP