

Wollongong Local Planning Panel Assessment Report | 20 November 2019

WLPP No.	Item No. 4
DA No.	DA-2007/303/A
Proposal	Change to service station operating hours Modification A - amend condition 1 - approved hours of operation
Property	Lot 6 Sec 4 DP 758513, Lot 7 Sec 4 DP 758513 - 149-151 Parkes Street, HELENSBURGH NSW 2508
Applicant	Planik Pty Ltd
Responsible Team	Development Assessment and Certification – City Wide Team (JP)

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Local Planning Panel

The proposal has been referred to the Wollongong Local Planning Panel **for advice** pursuant to Section 1(d) of Wollongong City Council's Draft Submissions Policy, as the proposed development is the subject of five or more unique submissions by way of objection and is made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Proposal

The application seeks to extend the approved hours of operation.

Permissibility

The modification relates to a **service station**, which is not a permissible use in the R3 Medium Density Residential zone; however, the modification relates to an existing approved service station development.

Consultation

The proposal was notified in accordance with Council's Notification Policy and received twelve unique (12) submissions, which are discussed at Section 1.4 of the assessment report.

Referrals

Council's Environment Officer has reviewed the application and provided satisfactory referral advice.

Main Issues

- Amenity impact of extension of hours of operation, in particular noise

This issue is considered to have been satisfactorily addressed as discussed at Section 1.1 of the report below.

RECOMMENDATION

It is recommended that modification application **DA-2007/303/A** be approved subject to the revised condition 1 as follows:

1. Hours of Operation

1.1 The service station may only operate between 5.00am and 11.00pm.

1.2 The workshop may only operate between 7.00am and 6.00pm.

- 1.3 *The delivery of goods and services may only occur between:*
- *6.00 am to 8.00 pm Monday to Saturday*
 - *7.00 am to 8.00 pm Sundays and Public Holidays*
- 1.4 *The delivery of fuel and other products delivered by large trucks may only occur between:*
- *6.00 am to 10.00 pm Weekdays*
 - *7.00 am to 10.00 pm Saturdays*
 - *8.00 am to 10.00 pm Sundays and Public Holidays*

APPLICATION OVERVIEW

1.1 DETAILED DESCRIPTION OF PROPOSAL

The existing consent relating to the service station was granted in 1972 (DA-1971/425). The current hours of operation were approved under DA-2007/303 are as follows:

1. Hours of Operation

1.1 The service station may only operate between 5:00am and 9:00pm

1.2 The workshop may only operate between 7:00am and 6:00pm

1.3 The delivery of goods and services may only occur between 8:00am and 6:00pm

1.4 The delivery of fuel and other products delivered by large trucks may only occur between 8:00am and 6:00pm.

The applicant has requested that Council permit an extension to the current service station hours of operation as follows:

1. Hours of Operation (Requested)

*1.1 The service station may only operate between 4:00am and 12:00pm (midnight) **

1.2 The workshop may only operate between 7:00am and 6:00pm

1.3 The delivery of goods and services may only occur between:

- 5am to 10pm Weekdays*
- 7am to 10pm Saturdays*
- 8am to 10pm Sundays*

1.4 The delivery of fuel and other products delivered by large trucks may only occur between:

- 5am to 10pm Weekdays*
- 7am to 10pm Saturdays*
- 8am to 10pm Sundays*

The reasons for the request are stated as follows:

The proposed hours of operation will provide increased availability of a key service to the locality. The current hours of operation restrict the availability and service of petrol and convenience goods to the locality which is noted as having the highest growth rates of Wollongong LGA.

The growing 24/7 supply chain means that operators need to have extended hours to accept deliveries of fuel and goods across all metropolitan areas.

The locality is noted to be on the fringe of Wollongong and Sydney and flexibility is especially required as:

- Every other business closes in town and the village is left without access to convenience goods and fuel.*
- Delivery contractors require a larger window of time to effectively service Helensburgh due to its fringe location.*

The proposed amendments are consistent with the hours of operation for service stations across the metropolitan area.

Helensburgh's growth has been a driver in the demand on this business to be convenient to its population.

An Acoustic Assessment prepared by GHD is submitted with the application and confirms that the proposed hours of operation will not impact on the amenity of the neighbourhood.

Given the established service station setting of the site the proposed hours of operation are considered appropriate.

Following expiration of the public exhibition period, consideration of submissions received, and having regard for the Applicant's response to Council's request for information, the Applicant was advised that Council would only consider support for an extension in night time operational hours as follows:

1. Hours of Operation (Revised)

- 1.1 *The service station may only operate between 5.00am and 11.00pm.*
- 1.2 *The workshop may only operate between 7.00am and 6.00pm.*
- 1.3 *The delivery of goods and services may only occur between:*
 - *6.00 am to 8.00 pm Monday to Saturday*
 - *7.00 am to 8.00 pm Sundays and Public Holidays*
- 1.4 *The delivery of fuel and other products delivered by large trucks may only occur between:*
 - *6.00 am to 10.00 pm Weekdays*
 - *7.00 am to 10.00 pm Saturdays*
 - *8.00 am to 10.00 pm Sundays and Public Holidays*

It is considered the revised hours balance the operational needs of service station and reflect the sensitive nature of surrounding residential land uses.

Section 4.55 Modification of consents-generally

The proposal is considered to be a section 4.55 modification as outlined below.

(2) Other modifications

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*

The modification is considered to be substantially the same development as follows:

- No change to categorisation of development
- No increase in FSR
- No increase in bulk or scale
- Minimal additional impact on amenity arising from light and noise as a result of the increased hours in their reduced form
- Minimal increase in traffic generation

- Council’s Environment Officer has assessed the Applicant’s acoustic report and found it to be satisfactory, but has recommended revised hours of operation.

(b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) 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 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*

The application was renotified in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising.

(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.*

Submissions received following notification are addressed in section 1.5 below.

(3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.*

The relevant matters of consideration under section 4.15 are outlined below.

1.2 BACKGROUND

Council files record the following development history:

DA Number	Description	Decision	Date
DA-2008/837/A	Alterations and additions to service station shop, new car wash facility, canopy area, relocation of mechanical workshop and replacement of shell signs Modification A – modification to canopy and carwash construction and amendment to condition number 10	Approved	23/12/2009
DA-2008/837	Alterations and additions to service station shop, new car wash facility, canopy area, relocation of mechanical workshop and replacement of shell signs	Approved	20/05/2009
DA-2007/658	Removal of existing underground tank and replace with 35,000 litre tank	Approved	28/05/2007
DA-2007/303	Change to service station operating hours	Approved	14/03/2007
DA-2002/920	Garage	Approved	2/8/2002
DA-1993/23	Extension to service station	Approved	12/01/1993
DA-1971/425	Service Station & Residence	Approved	28/21972

No pre-lodgement meeting was held for the proposal.

Customer service actions

While there is a history of interactions between surrounding residents and Council's Regulation and Enforcement Section relating to impacts arising from the service station, all matters to date have been resolved and there are no outstanding customer service requests of relevance to the development.

1.3 SITE DESCRIPTION

The site is located 149-151 Parkes Street, HELENSBURGH NSW 2508 and the title reference is Lot 6 Sec 4 DP 758513 and Lot 7 Sec 4 DP 758513. The site on two lots of irregular shape, with the service station itself sited on a triangular-shaped corner lot. The site has frontage to Parkes Street and Lilyvale Street. The existing service station was constructed in the early 1970s. It comprises a shop, petrol servicing area and first floor residence. A car wash is situated to the rear of the service station, but is a separate business. The site is in a residential area and due to corner location and the street layout is within view of more residential properties than might normally be the case for a development of this type. Parkes Street is a collector road and Lilyvale Street is a local road. The closest residences are located opposite in Lilyvale Street and adjacent in Parkes Street.

Property constraints

Council records identify the land as being impacted by the following constraints:

- Contamination

There are no restrictions on the title that would prevent the change of hours.



Figure 1: Aerial photograph



Figure 2: WLEP 2009 zoning map

1.4 SUBMISSIONS

The application was notified in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising. Due to an administrative error, 23 Lilyvale Street was inadvertently omitted from the notification list; however, their submission was received and has been considered as part of this assessment. Overall, 12 unique submissions were received, and the matters raised are summarised and addressed in Table 1 below.

Table 1: Submissions

Concern	Comment
1. Notification not received/insufficient time provided.	The application was notified to adjoining and adjacent properties in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising, and notified properties are on the notification map above. Due to an administrative error, 23 Lilyvale Street was inadvertently omitted from the notification list; however, their submission was received and has been considered as part of this assessment.
2. Need for 24-hour fuel service	Council notes that the application does not request 24-hour operation, but acknowledges its residential setting and has recommended revised hours of operation from those originally requested.
3. Safety issues/ traffic management	This assessment relates to the extension of hours of operation.
4. Issues with noise assessment	The application was referred to Council's Environment Officer, who is satisfied with the methodology of the acoustic consultant.

Concern	Comment
5. Anti-social and criminal behaviour	Any anti-social and criminal behaviour should be reported to police as and when it arises; however, the revised hours are not anticipated to exacerbate existing conditions.
6. Property values	Property values are of limited relevance to planning assessment considerations.
7. Non-compliance with existing conditions	Any non-compliance with existing conditions should be reported to Council's Regulation and Enforcement Section as and when they occur. It is noted that Council's records show there are no current outstanding Regulation and Enforcement matters.
8. Existing operational noise, light, smell and other amenity issues.	The requested increase in hours is not anticipated to exacerbate existing conditions. It is noted that Council's records show there are no current outstanding Regulation and Enforcement matters.
9. Contamination	The site does not appear on the Contaminated Land Management Act register, but is noted as contaminated land in Council's constraints mapping by virtue of the current land use. The proposed extension of hours does result in earthworks. The application was considered by Council's Environment Officer who did not raise any objections in this regard.

1.5 CONSULTATION

1.5.1 INTERNAL CONSULTATION

Environment Officer

Council's Environment Officer has reviewed the application and given a satisfactory referral subject to conditions of consent, including a reduction in hours compared to what was initially requested.

1.5.2 EXTERNAL CONSULTATION

None required.

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – 4.15 EVALUATION

2.1 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

7 Contamination and remediation to be considered in determining development application

(1) *A consent authority must not consent to the carrying out of any development on land unless:*

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) *The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) *The land concerned is:*
 - (a) *land that is within an investigation area,*
 - (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
 - (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:*
 - (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

While Council records do indicate the potential for contaminated land, there are no earthworks proposed and the proposal does not comprise a change of use. Council's Environment Officer has reviewed the proposed development and has raised no objection. Consequently, no concerns are raised in regard to contamination as relates to the existing/intended use of the land and the requirements of clause 7.

2.1.2 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

service station means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:

- (a) the ancillary sale by retail of spare parts and accessories for motor vehicles,
- (b) the cleaning of motor vehicles,
- (c) installation of accessories,
- (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),
- (e) the ancillary retail selling or hiring of general merchandise or services or both.

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned R3 Medium Density Residential.

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

While the **service station** use is prohibited in the zone, the proposal was originally approved under DA-1971/425, but is otherwise satisfactory with regard to the above objectives.

The land use table permits the following uses in the zone.

Attached dwellings; Backpackers' accommodation; Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Exhibition homes; Exhibition villages; Group homes; Home-based child care; Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shop top housing; Signage; Tank-based aquaculture; Veterinary hospitals

The proposal is categorised as a service station as defined above and is not permissible in the zone, but relies on the existing consent (DA-1971/425). In this regard Section 4.70 of the Environmental Planning and Assessment Act 1979 is relevant, as described in the following.

Consideration of Section 4.70 Saving of effect of existing consents

(1) Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.

(2) This section:

(a) applies to consents lawfully granted before or after the commencement of this Act, and

(b) does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and

(c) has effect despite anything to the contrary in section 4.66 or 4.68.

(3) This section is taken to have commenced on the commencement of this Act.

Comment:

The existing *service station* on the subject site was approved under development application DA-1971/425 on 28 February 1971. Council's mapping indicates that the existing service station is located in the R3 zone. It is considered that consent has been granted and is in force after the commencement of the Act and therefore can be modified.

Division 4.11 Existing uses

The applicant's submission for existing use rights is provided below.

Section 4.11 Existing uses

Section 4.11 of the Environmental Planning and Assessment Act contains provisions relating to existing uses, the continuance and limitations of an existing use, and regulations respecting existing use. The relevant provisions of Section 4.11 of the Act are addressed, in turn, below:

Division 4.11 Existing uses

4.65 Definition of “existing use”(cf previous s 106)

In this Division, existing use means:

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

(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and

(ii) that has been carried out, within one year after the date on which that provision

commenced, in accordance with the terms of the consent and to such an extent as to ensure

(apart from that provision) that the development consent would not lapse.

The proposed modifications to the subject development DA-2007/303 benefit from existing use rights as defined above as the subject *service station* was approved in 1971 and hours of operation were amended on 14 May 2007 prior to the commencement of the current Wollongong LEP 2009. The subject use was therefore lawfully approved prior to the coming into force of the EP&A Act 1979 and the current environmental planning instrument, and has been carried out continuously from the date of approval and therefore benefits from existing use rights.

4.66 Continuance of and limitations on existing use(cf previous s 107)

(1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.

(2) Nothing in subsection (1) authorises:

(a) any alteration or extension to or rebuilding of a building or work, or

(b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or

(c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or

(d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17 (1) (b), or

(e) the continuance of the use therein mentioned where that use is abandoned.

(3) Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

Section 4.66 of the Act allows for the continuance of an existing use. This section does not allow the alteration or intensification of an existing use.

4.67 Regulations respecting existing use (cf previous s 108)

(1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to:

(a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and

(b) the change of an existing use to another use, and

(c) the enlargement or expansion or intensification of an existing use.

(d) (Repealed)

(2) The provisions (in this section referred to as the incorporated provisions) of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.

(3) An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.

(4) Any right or authority granted by the incorporated provisions or any provisions of an environmental planning instrument extending, expanding or supplementing the incorporated provisions do not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 4.33 to a development application for consent to carry out prohibited development.

Section 4.67 of the Act states that the regulations may make provision with respect to an existing use being altered, extended, enlarged, expanded or intensified. The relevant existing use provisions of the regulations are addressed as follows:

Environmental Planning and Assessment Regulation 2000

Clause 41 –

(1) An existing use may, subject to this Division:

(a) be enlarged, expanded or intensified, or

(b) be altered or extended, or

(c) be rebuilt, or

(d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or

(e) if it is a commercial use—be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or

(f) if it is a light industrial use—be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).

(2) However, an existing use must not be changed under subclause (1) (e) or (f) unless that change:

(a) involves only alterations or additions that are minor in nature, and

(b) does not involve an increase of more than 10% in the floor space of the premises

associated with the existing use, and

(c) does not involve the rebuilding of the premises associated with the existing use, and

(d) does not involve a significant intensification of that existing use.

(e) (Repealed)

The proposed modification to the approved development consent seeks an increase to the approved hours of operation of the subject service station. The proposed modification can be carried out pursuant to Clause 41 of the EPA Regulation 2000.

The subject use being a **service station** is not defined as a commercial premises or light industrial premises under the Wollongong LEP, and therefore the provisions of Clause 41(2) do not apply to the proposed modifications seeking an increase in hours of operation for a **service station**.

Nevertheless, without prejudice the proposed modifications are consistent with the provisions of Clause 41(2) as the proposal does not seek any building works (enlargement of premises/additional bowzers), and only seeks an increase to hours of operation.

The additional 4 hours of operation represent a 25% increase in operation hours as originally approved and as stated earlier the operator would be satisfied with a lesser extended hour period than originally applied for. The proposed modification to delivery hours are not an intensification of the use in respect to number of items delivered, noting they only seek modified times to receive delivery of the goods and this would be on occasions not a constant. It is crucial for the business that they can occasionally flex acceptance of deliveries when there are issues with the supply chain (ie problems at the port with fuel deliveries).

Finally, the proposed modifications to the existing use are supported by an acoustic report which confirm that the changes to the use will not have significant amenity impacts upon the neighbouring properties.

Clause 42 – (1) Development consent is required for any enlargement, expansion or intensification of an existing use.

(2) The enlargement, expansion or intensification:

(a) must be for the existing use and for no other use, and

(b) must be carried out only on the land on which the existing use was carried out immediately before the relevant date.

This application seeks consent for the increased hours of operation of the existing service station on the subject site. The increased hours of operation are for the existing use on the site, which has been carried out continuously since its approval on 14 May 2007.

Comment: Council accepts the justification above.

2.2 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

None applicable.

2.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

Wollongong Development Control Plan 2009 applies; however, in this circumstance it is of limited relevance.

2.3.1 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2018

Not applicable -the proposed modification does not alter the estimated cost of works.

2.4 SECTION 4.15(1)(A)(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

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

2.5 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

Not applicable.

2.6 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

There are not expected to be adverse environmental impacts on either the natural or built environments or any adverse social or economic impacts in the locality.

This is demonstrated through the following:

- The proposal is satisfactory with regard to the applicable planning controls as detailed in the body of this report.
- Submissions raised following notification would not preclude the development.
- The internal referral is conditionally.

2.7 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

Does the proposal fit in the locality?

The proposal is not expected to have negative impacts on the amenity of the locality or adjoining developments.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

2.8 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

Submissions received following notification are addressed in section 1.5 above.

2.9 SECTION 4.15(1)(E) THE PUBLIC INTEREST

The application is not expected to have unreasonable impact on the environment or the amenity of the locality. It is considered appropriate with consideration to the existing character of the area and is therefore considered to be in the public interest.

3 CONCLUSION

This application has been assessed as satisfactory having regard to the Heads of Consideration under Section S4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies.

4 RECOMMENDATION

It is recommended that modification application **DA-2007/303/A** be approved subject to revised condition 1 as follows:

1. Hours of Operation

- 1.1 *The service station may only operate between 5.00am and 11.00pm.*
- 1.2 *The workshop may only operate between 7.00am and 6.00pm.*
- 1.3 *The delivery of goods and services may only occur between:*
 - *6.00 am to 8.00 pm Monday to Saturday*
 - *7.00 am to 8.00 pm Sundays and Public Holidays*
- 1.4 *The delivery of fuel and other products delivered by large trucks may only occur between:*
 - *6.00 am to 10.00 pm Weekdays*
 - *7.00 am to 10.00 pm Saturdays*
 - *8.00 am to 10.00 pm Sundays and Public Holidays*

5 ATTACHMENTS

1. Acoustic Report
2. Existing Consent DA-2007/303



Shell Helensburgh

149-151 Parkes St, Helensburgh - noise assessment
Acoustic Assessment - Noise emissions

June 2019

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Figure 2-1 Site location3

Appendices

Appendix A – Noise monitoring charts
Appendix B – Hourly breakdown of customers
Appendix C – Current deliveries schedule

1. Introduction

1.1 Introduction

GHD has prepared an acoustic assessment for the proposed extension of hours for the existing service station located at 149 – 151 Parkes St, Helensburgh. The objective of this acoustic assessment is to determine noise emissions from the use and operation of the service station, and where required, provide mitigation measures to achieve the relevant requirements of Wollongong City Council.

1.2 Scope of works

This report has been prepared to support the request for extension of hours of operation for the existing service station. The request will be lodged with Wollongong City Council.

The scope of this assessment includes:

- Assessment of the operational noise emission of mechanical plant and other noise generating equipment in accordance with the requirements of Wollongong City Council
- Provide mitigation measures, where required, to reduce noise emission to acceptable levels.

This report has been prepared with consideration of the following documents:

- Wollongong City Council Local Environmental Plan (LEP) and Development Control Plan (DCP)
- NSW EPA's Noise Policy for Industry (NPI) 2017

1.3 Limitations

This report: has been prepared by GHD for Shell Helensburgh and may only be used and relied on by Shell Helensburgh for the purpose agreed between GHD and the Shell Helensburgh as set out in section 1 of this report.

GHD otherwise disclaims responsibility to any person other than Shell Helensburgh arising in connection with this report. GHD also excludes implied warranties and conditions, to the extent legally permissible.

The services undertaken by GHD in connection with preparing this report were limited to those specifically detailed in the report and are subject to the scope limitations set out in the report.

The opinions, conclusions and any recommendations in this report are based on conditions encountered and information reviewed at the date of preparation of the report. GHD has no responsibility or obligation to update this report to account for events or changes occurring subsequent to the date that the report was prepared.

The opinions, conclusions and any recommendations in this report are based on assumptions made by GHD described in this report. GHD disclaims liability arising from any of the assumptions being incorrect.

GHD has prepared this report on the basis of information provided by Shell Helensburgh and others who provided information to GHD (including Government authorities)], which GHD has not independently verified or checked beyond the agreed scope of work. GHD does not accept liability in connection with such unverified information, including errors and omissions in the report which were caused by errors or omissions in that information.

The opinions, conclusions and any recommendations in this report are based on information obtained from, and testing undertaken at or in connection with, specific sample points. Site conditions at other parts of the site may be different from the site conditions found at the specific sample points.

Investigations undertaken in respect of this report are constrained by the particular site conditions, such as the location of buildings, services and vegetation. As a result, not all relevant site features and conditions may have been identified in this report.

Site conditions (including the presence of hazardous substances and/or site contamination) may change after the date of this Report. GHD does not accept responsibility arising from, or in connection with, any change to the site conditions. GHD is also not responsible for updating this report if the site conditions change.

2. Existing environment

The existing service station is located at 149 – 151 Parkes Street, Helensburgh, within a medium density residential zone (R3) as shown in Figure 2-1 below. The existing hours of operation of the service station are:

- Operation – 5 am to 9 pm
- Deliveries – 8 am to 6 pm

The proposed extended hours are of operation are:

- Operation – 4 am to midnight
- Deliveries – 24 hrs



Figure 2-1 Site location

Table 2-1 presents a list of the surrounding sensitive receivers being assessed.

Table 2-1 Surround sensitive receivers

Receiver ID	Receiver type	Address
R01	Residential	27 Lilyvale Street
R02		25 Lilyvale Street
R03		23 Lilyvale Street
R04		21 Lilyvale Street
R05		22 Lilyvale Street
R06		20 Lilyvale Street
R07		147 Parkes Street
R08		147A Parkes Street

Receiver ID	Receiver type	Address
R09	Residential	132 Parkes Street
R10		134 Parkes Street
R11		134 A Parkes Street
R12		6 Laurine Avenue
R13		4 Laurina Avenue
R14		136 Parkes Street
R15		138 Parkes Street

3. Background monitoring

3.1 Methodology

The methodology for the noise monitoring program included the following:

- Identification of sensitive receivers including residences and other sensitive land uses in the vicinity of the proposal
- Noise logging was conducted from Monday 27th May to Wednesday 5th June 2019.
- A calibration check was performed on the noise monitoring equipment using a sound level calibrator with a sound pressure level of 94 dB) at 1 kHz. At completion of the measurements, the meter's calibration was re-checked to ensure the sensitivity of the noise monitoring equipment had not varied. The noise loggers were found to be within the acceptable tolerance of ± 0.5 dBA
- Noise monitoring was undertaken using a Rion NL-52 environmental noise logger. The noise logger was programmed to accumulate LA_{90} , LA_{10} , and LA_{eq} noise descriptors continuously over the entire monitoring period. Details of the noise monitoring equipment are provided in Table 3-1
- The data collected by the loggers was downloaded and analysed, and any invalid data removed. Invalid data generally refers to periods of time where average wind speeds were greater than 5 m/s, or when rainfall occurred. Meteorological data was sourced from the Bureau of Meteorology's Holsworthy Defence AWS weather station (number 068263).

All noise monitoring activities were undertaken and processed in accordance with the Noise Policy for Industry (EPA, 2017) long-term monitoring method. All noise logger settings and descriptors used were based on this method.

Table 3-1 Unattended noise monitoring details

Location	Equipment details	Equipment settings
1C Laurina Avenue, Helensburgh	Rion NL-52 SN: 00131632	A-weighted Fast time response 15 minute intervals Pre to post calibration variance: 0.5 dB

3.2 Results

Details of the noise monitoring equipment and location are provided in Table 3-1. Noise monitoring results are summarised in Table 3-2. Noise monitoring charts are presented in Appendix A.

Table 3-2 Summary of noise monitoring results, dBA

Location	Background noise descriptors L _{A90} (Period)			
	Day	Evening	Night	Weekday MSP ¹ (5am – 7 am)
1C Laurina Avenue, Helensburgh	44	39	35	44
Note: 1) Weekday MSP – Weekday Morning shoulder period				

4. Criteria

4.1 Wollongong City Council

A review of the Wollongong City Council Development Control Plan (2009) (DCP) and the Local Environmental Plan (2009) (LEP) was undertaken and does not contain any specific acoustic requirements for the assessment of the use and operation of a service station in a residential area. In lieu of any specific requirements, guidance on intrusive noise and sleep disturbance has been taken from the *Noise Policy for Industry* (2017).

4.2 Noise policy for Industry (NPI) 2017

4.2.1 Project intrusiveness noise level

The intrusiveness of an industrial noise source may generally be considered acceptable if the level of noise from the source (represented by the L_{Aeq} descriptor), measured over a 15 minute period, does not exceed the background noise level by more than 5 dB when beyond a minimum threshold. This intrusiveness noise level seeks to limit the degree of change a new noise source introduces to an existing environment.

Intrusiveness noise levels are not used directly as regulatory limits. They are used in combination with the amenity noise level to assess the potential impact of noise, assess reasonable and feasible mitigation options and subsequently determine achievable noise requirements.

Table 4-1 Intrusive noise criteria

Intrusive noise criteria	Day (7 am till 6 pm), dBA	Evening (6 pm to 10 pm), dBA	Night (10 pm to 7 am), dBA	Weekday MSP (5 am to 7 am)
Criteria (RBL + 5 dB)	49	44	40	49

4.3 Sleep disturbance

The potential for sleep disturbance from maximum noise level events from premises during the night-time period needs to be considered. Sleep disturbance is considered to be both awakenings and disturbance to sleep stages. Where the subject development/premises night-time noise levels at a residential location exceed:

- $L_{Aeq,15min}$ 40 dB(A) or the prevailing RBL plus 5 dB, whichever is the greater, and/or
- L_{AFmax} 52 dB(A) or the prevailing RBL plus 15 dB, whichever is the greater,

a detailed maximum noise level event assessment should be undertaken.

5. Assessment of impact

5.1 Modelling Methodology

Noise modelling was undertaken using CadnaA 2018 based on the measured data described in Section 4.1. CadnaA is a computer program for the calculation, assessment and prognosis of noise exposure. Environmental noise propagation in CadnaA was calculated using the ISO 9713-2 algorithm.

The following noise modelling assumptions were made to establish site specific conditions:

- Surrounding land was modelled assuming hard ground (the surrounding area is a mixture of soft and hard ground) with a ground absorption coefficient of 0.3
- Modelled scenarios take into account the shielding effect from surrounding buildings and structures on and adjacent to the site
- Receivers were modelled at a height of 1.5 m (ground floor) and 5.5 m (first floor)

The following meteorological conditions used in the model:

- Atmospheric air absorption was based on an average temperature of 10°C and an average humidity of 75 % (conservative)
- Atmospheric propagation conditions were modelled with moderate inversions from source to receiver (ISO 9613)

5.2 Scenarios and assumptions

The assessment of noise emission from the use and operation of the service station has been conservatively assessed against the relevant criteria. Details on the number of customers per hour, delivery times and occurrences per week have been provided. This information is summarised in Appendix B. Based on this information the following worst-case scenarios have been modelled:

Deliveries:

In any 15 minute period;

- One (1) petrol tanker will arrive, parking (idle), pump petrol and exiting the facility along Parkes and Lilyvale Street with a sound power level (SWL) of 94 dB.
 - It is assumed that the petrol tanker takes at least one 15 minute period to unload the petrol

Operational (during proposed additional hours)

- 21 number of vehicles entering and exiting the facility with a sound power level (SWL) of 87 dB.
 - 12 vehicles using the fuelling stations
 - 9 vehicles parking

Sleep disturbance

SDS1:

- Car door slam in car park facility with a sound power level (SWL) of 100 dBA.

SDS2:

- Car door slam in fuelling area with a sound power level (SWL) of 100 dBA.

SDS3:

- Tyre pressure pump release at the automatic pump station with a sound power level (SWL) of 92 dBA

SDS4:

- Truck pass by along Parkes Street

5.3 Predicted noise levels

Table 5-1, below, presents the results of the operation and deliveries assessment. Table 5-2 presents the results of the sleep disturbance assessment.

Table 5-1 Predicted operational noise levels at surrounding sensitive receivers

Receiver	Predicted operational noise level, dBA	Predicted delivery noise level, dBA	Criteria, L _{Aeq} , 15 min dBA
R01	32	40	40
R02	18	30	
R03	28	39	
R04	17	34	
R05	17	26	
R06	20	28	
R07	29	46 ¹	
R08	21	31	
R09	28	33	
R10	34	38	
R11	34	40	
R12	22	28	
R13	25	30	
R14	27	33	
R15	25	30	

Notes: 1) During the 5 am to 7 am shoulder period, the RBL is 44 and the associated criteria is 49. The predicted noise level at the receiver is less than the criteria during the shoulder period.

5.4 Sleep disturbance assessment

Table 5-2, presents the predicted noise level from the sleep disturbances scenarios presented above at nearby sensitive receivers. Bold numbers indicate an exceedance of the night-time sleep disturbance criteria.

Table 5-2 Predicted noise levels from a car door slam at surrounding sensitive receivers

Receiver	SDS1	SDS2	SDS3	SDS4	Criteria, L _A Max dBA
R01	41	45	46	58¹	52
R02	33	34	34	38	
R03	38	44	39	44	
R04	31	40	33	36	
R05	32	30	28	32	
R06	40	31	23	34	
R07	47	46	40	55¹	
R08	33	33	39	39	
R09	41	39	32	39	
R10	44	43	32	47	
R11	43	44	37	50	
R12	34	34	42	35	
R13	35	36	34	41	
R14	35	38	38	54¹	
R15	34	36	35	55¹	
Notes: During the 5 am to 7 am shoulder period, the RBL is 44 and the associated L _A Max criteria is 59. The predicted noise level at the receiver is less than the criteria during the shoulder period. SDS3 should be limited to these hours					

5.5 Discussions

Based on the predicted values presented above, it is expected that general operations will not exceed the criteria detailed in section 4. Further a sleep disturbance assessment has been undertaken and it is expected that the activities associated with the use and operation of the petrol station (SDS1-SDS3) will not exceed the criteria presented in Section 4. Delivers in the night time (SDS4) are predicted to exceed the criteria at several sensitive receivers, and as such, additional mitigation or management measures should be implemented. This is further discussed in Section 6.

6. Recommendations

The predicated noise levels indicated that the noise emission associated with deliveries during the night-time period will exceed the NPI's noise emission criteria.

It is recommended that deliveries be limited to the following hours, as the background noise level (RBL) is higher during the early hours of the morning (5 am to 7 am), as presented in Table 3-2:

- 5 am to 10 pm on weekdays
- 7 am to 10 pm on Saturdays
- 8 am to 10 pm on Sundays

7. Conclusion

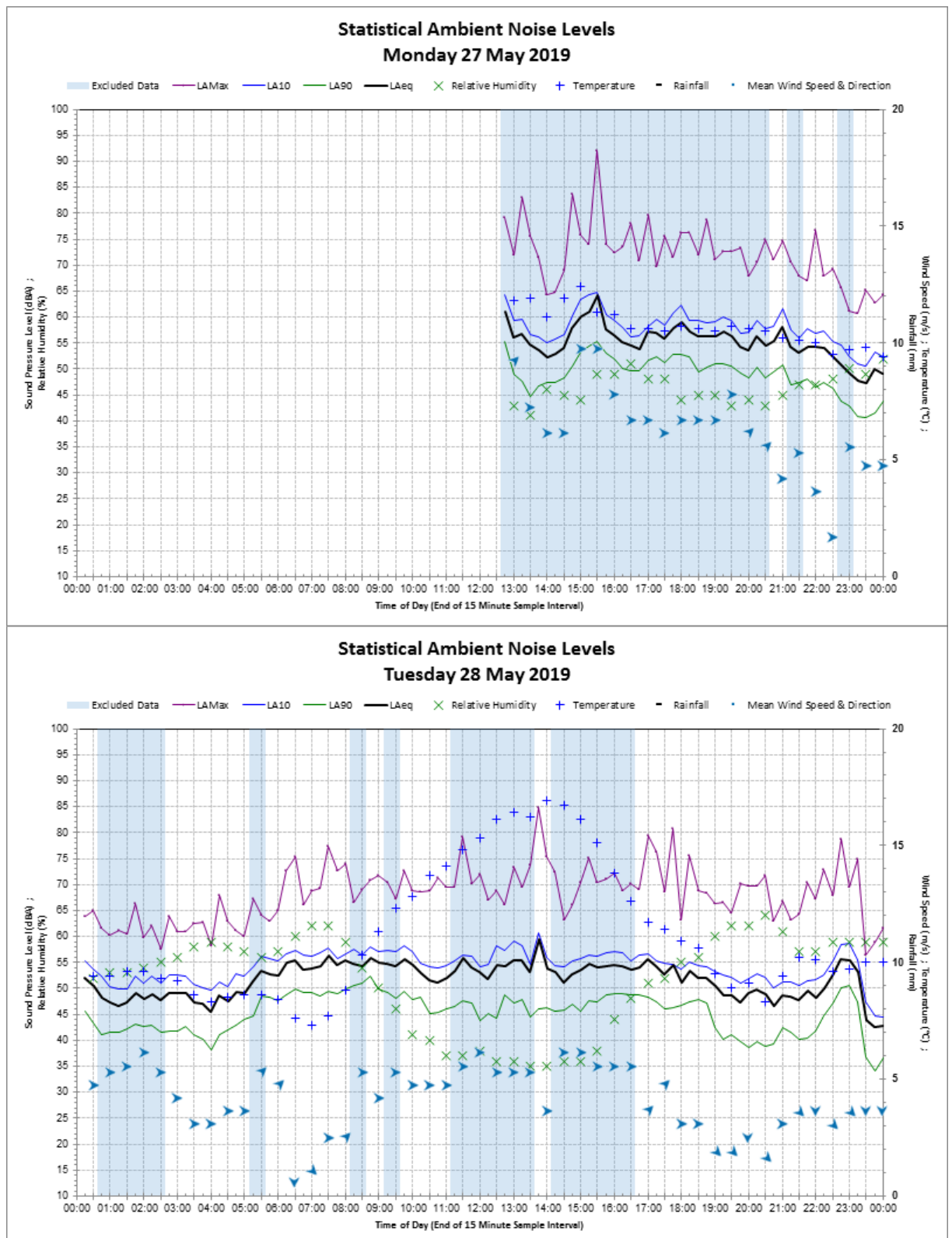
GHD has undertaken an acoustic assessment for the proposed extension of operating and delivery hours for the petrol station located at 149-151 Parkes Street, Helensburgh. GHD and can confirm the following:

- The noise emission associated with petrol station operations is expected to comply with the relevant noise criteria for the proposed hours of 4 am to midnight
- With the implementation of reduced hours for petrol station deliveries as outlined in Section 6 the noise emission associated with petrol station deliveries is expected to comply with the relevant noise criteria.

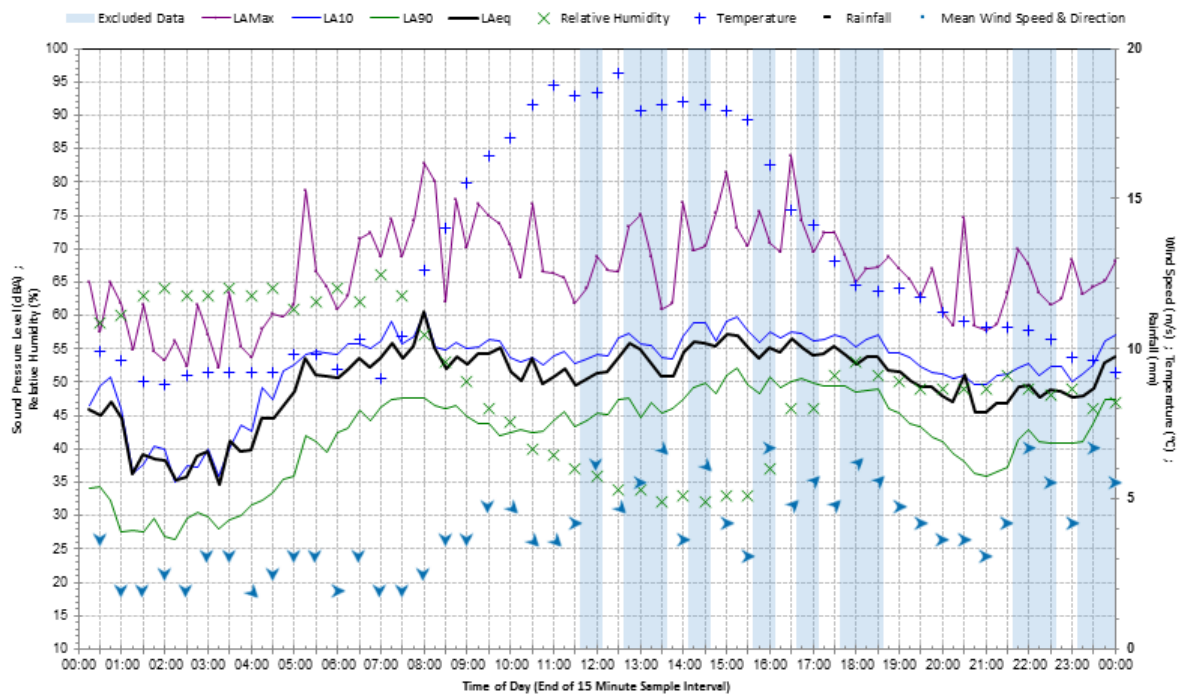
It is predicted that the premises is likely to meet the requirements of the Wollongong City Council and NSW EPA's Noise Policy for Industry and is considered acceptable from an acoustic perspective.

Appendices

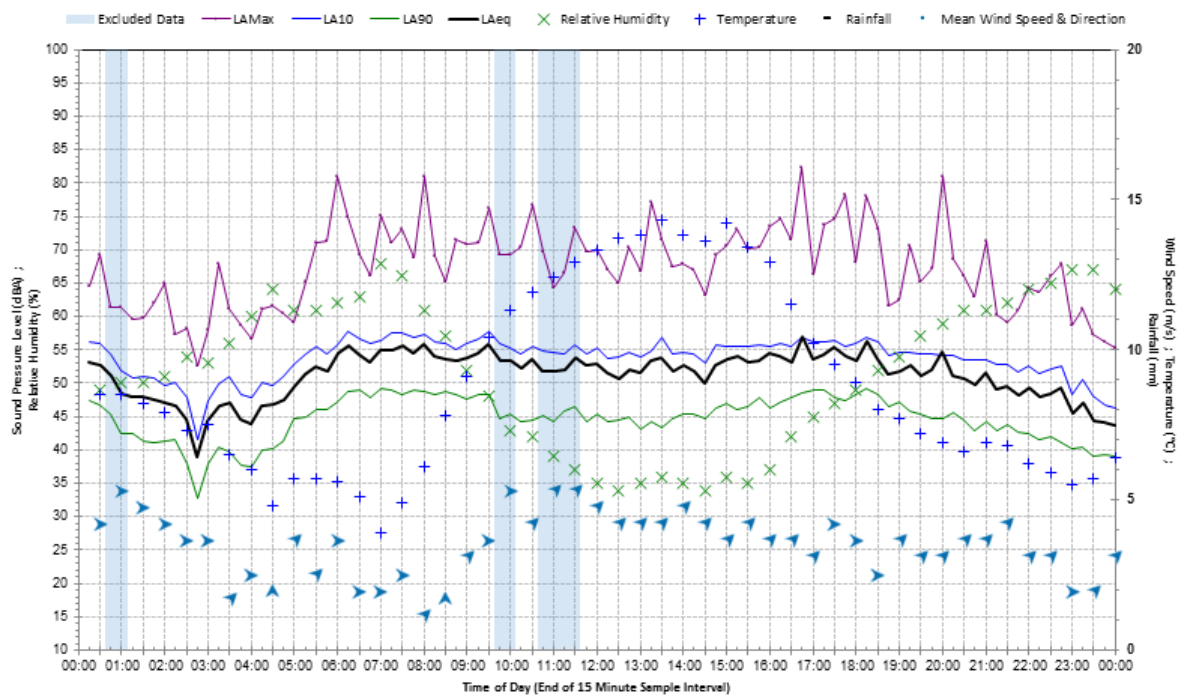
Appendix A – Noise monitoring charts



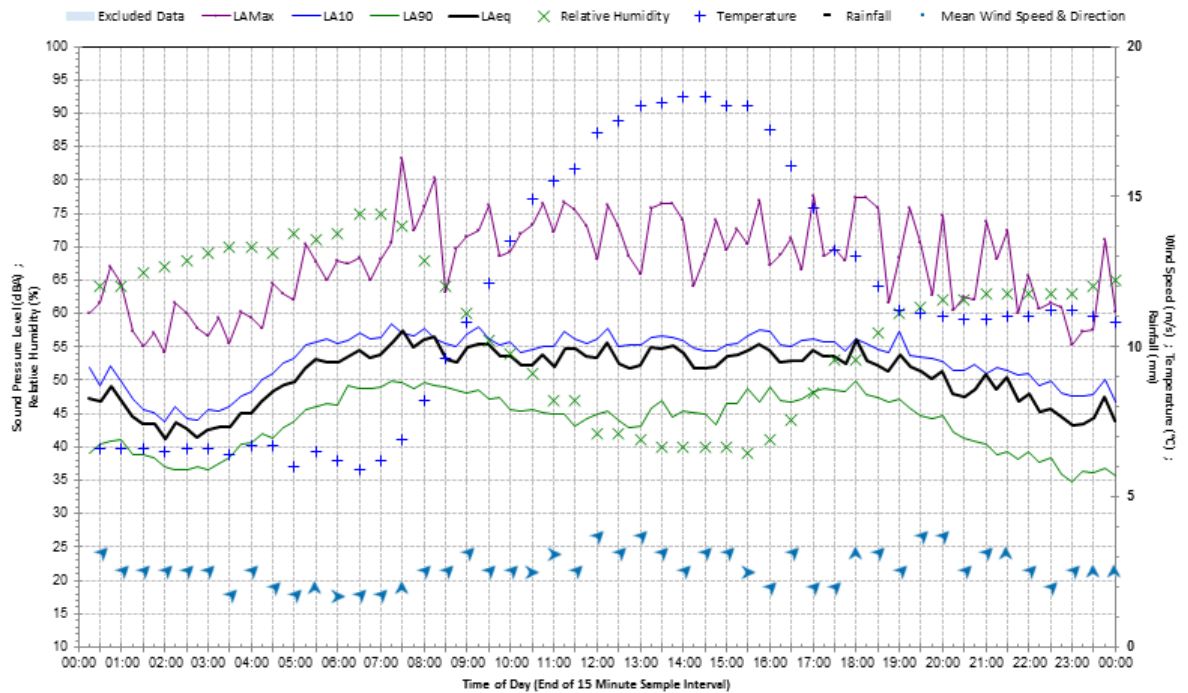
Statistical Ambient Noise Levels Wednesday 29 May 2019



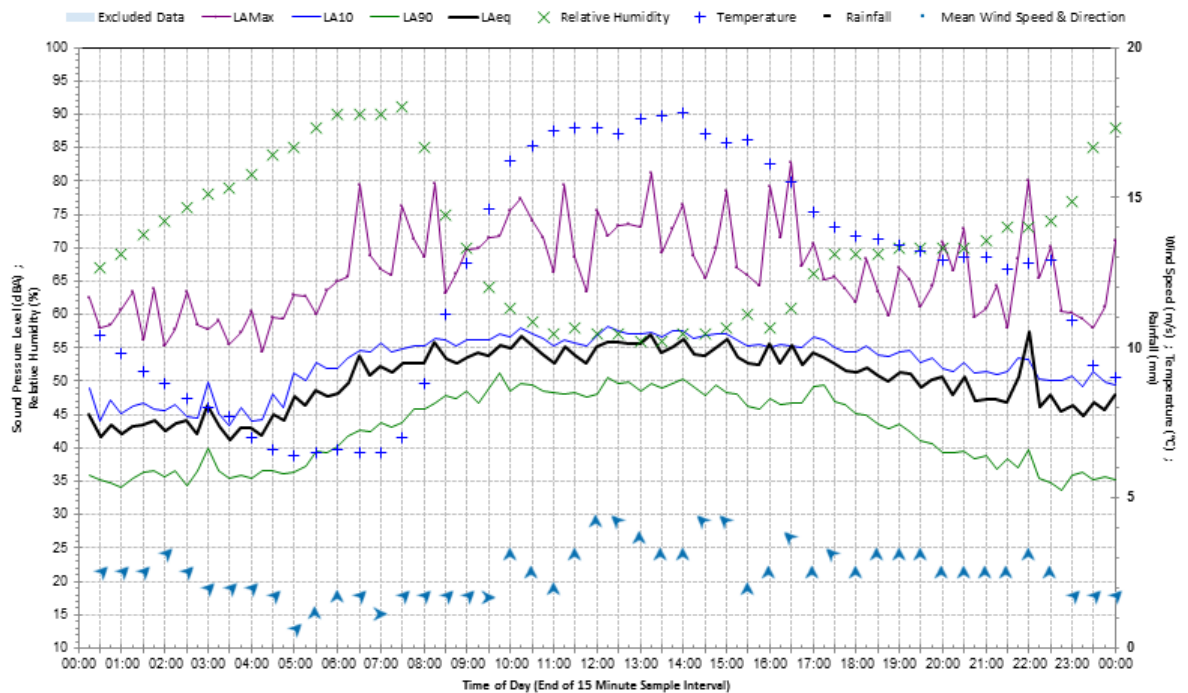
Statistical Ambient Noise Levels Thursday 30 May 2019



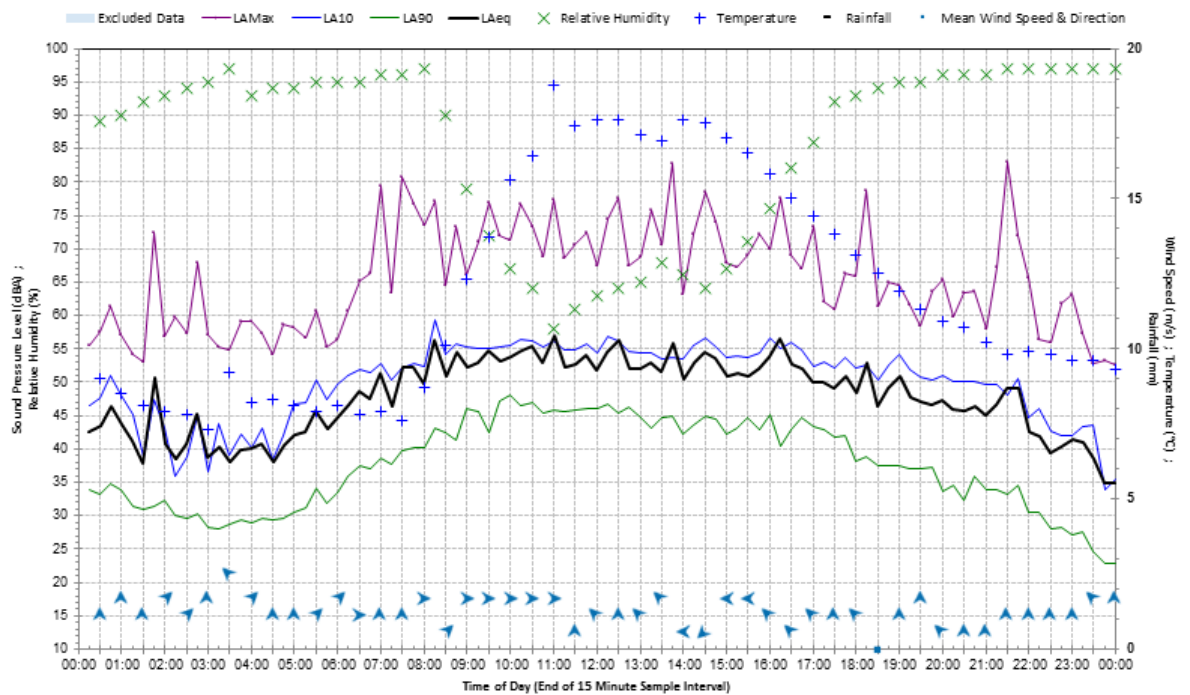
Statistical Ambient Noise Levels Friday 31 May 2019



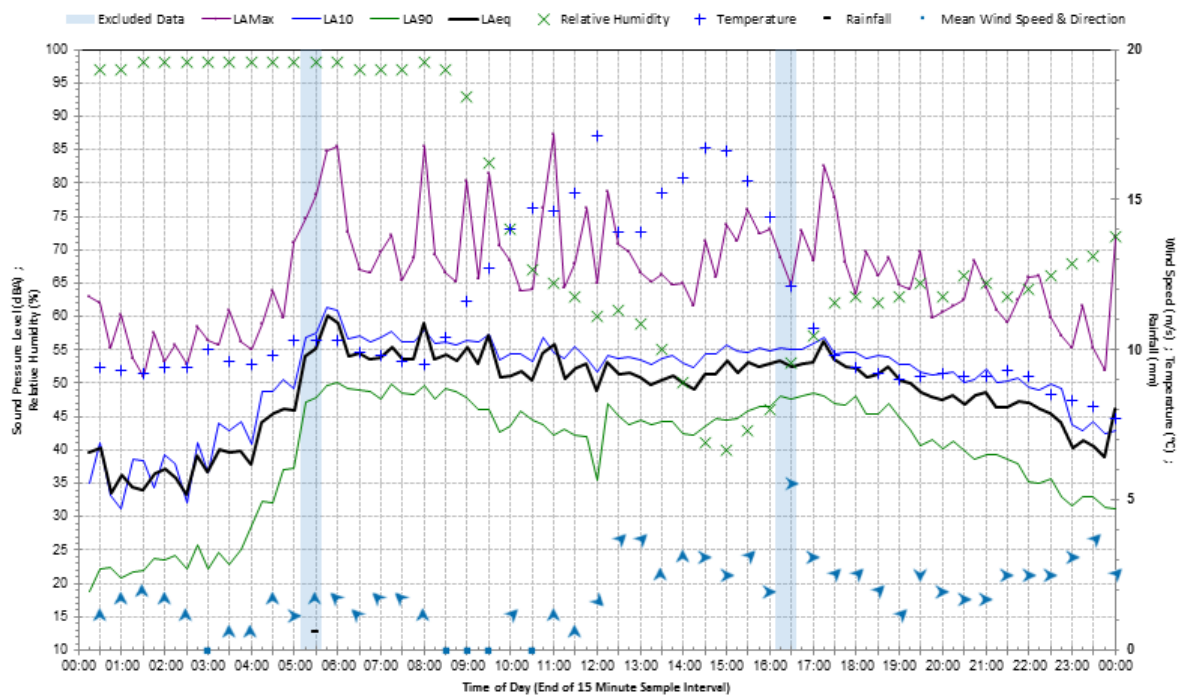
Statistical Ambient Noise Levels Saturday 1 June 2019



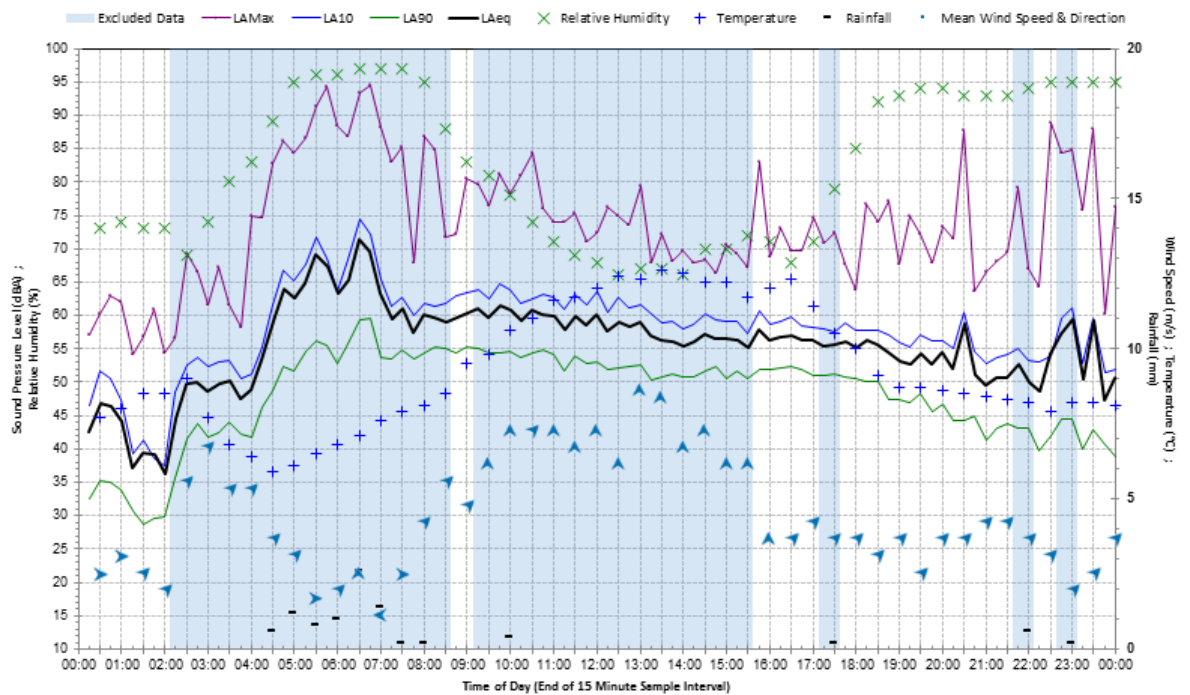
Statistical Ambient Noise Levels Sunday 2 June 2019



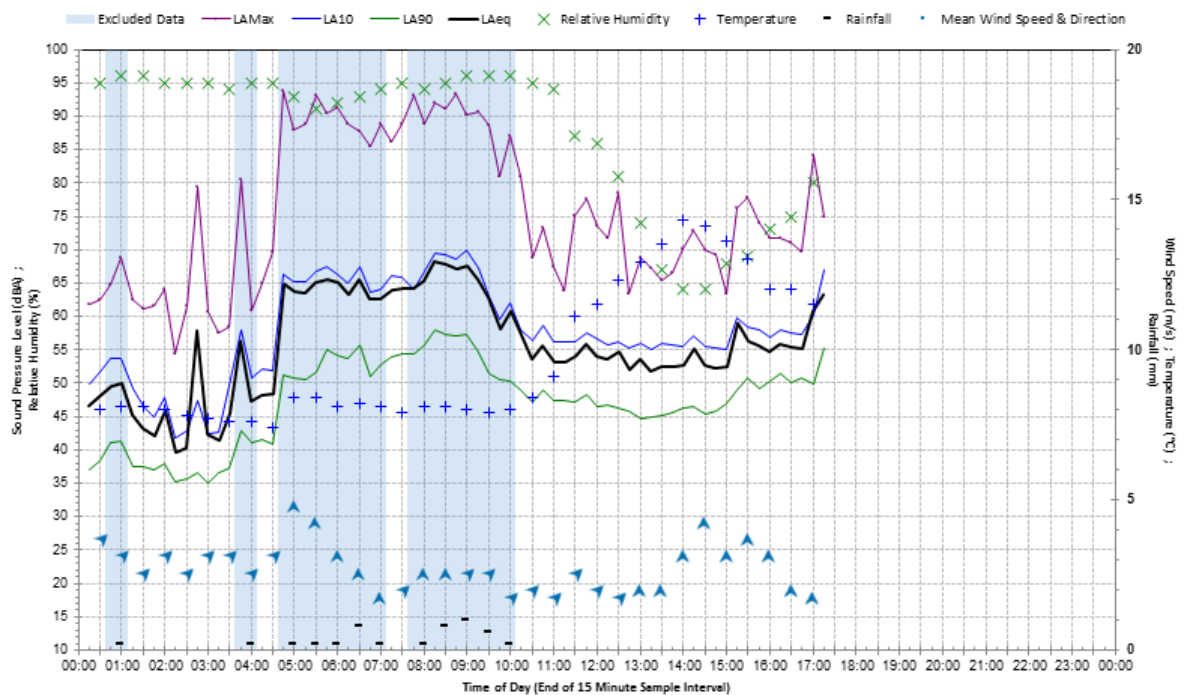
Statistical Ambient Noise Levels Monday 3 June 2019



Statistical Ambient Noise Levels Tuesday 4 June 2019



Statistical Ambient Noise Levels Wednesday 5 June 2019



Appendix B – Hourly breakdown of customers

Hour	Day							
	09/05/2019		10/05/2019		13/05/2019		15/05/2019	
	Fuel	Other	Fuel	Other	Fuel	Other	Fuel	Other
5	12	5	9	9	11	7	5	4
6	21	17	19	12	23	20	20	18
7	27	10	29	9	22	8	28	14
8	39	9	24	12	22	9	24	10
9	19	12	27	10	31	8	25	6
10	19	6	23	14	21	8	16	5
11	18	8	27	7	23	4	24	6
12	13	6	26	16	20	4	21	10
13	19	10	30	10	19	6	11	6
14	23	3	18	5	11	9	19	10
15	27	19	28	32	26	7	28	13
16	26	14	33	10	30	14	31	12
17	29	13	43	12	34	17	26	22
18	19	12	20	15	21	7	27	12
19	13	4	13	10	13	3	11	3
20	6	5	3	8	8	6	11	6

Appendix C – Current deliveries schedule

Delivery Type	Delivery vehicle	Hours of delivery	No. of deliveries per week
Frucor (Drinks)	Truck – Small	11 am – 2 pm	Wednesday
Schwepps	Truck – Small	4 pm – 6 pm	Monday
Coke	Truck – Small	11 am – 2 pm	Wednesday
Steel city (Drinks)	Truck - Small	9 am – 11 am	Once a week
Cigarettes	Truck - Small	9 am – 5 pm	Once a week
Southern Sweets	Truck - Small	10 am – 1 pm	Once a week
Milk	Truck - Small	6 am – 7 am	Three times a week
Fuel delivery	Truck - Large	8 am – 11 am	Three times a week
Firewood	Truck - Small	8 am – 1 pm	Once a week
Elgas	Truck - Small	8 am – 10 am	Tuesdays
Newspapers	Van	4:30 am – 5 am	Everyday

GHD

Level 3

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Document Status

Revision	Author	Reviewer		Approved for Issue		
		Name	Signature	Name	Signature	Date
0	K Thurecht	C Gordon		E Milton		14/06/2019

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013

Mr Russell Skiller
RJ Shell Helensburgh Service Station
149 Parkes St
HELENSBURGH NSW 2508

APPLICATION	DA-2007/303
Determination	Conditionally Approved
Approval Authority	Wollongong City Council
Endorsement Date	14 May 2007

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION

Issued under Section 81 of the Environmental Planning and Assessment Act 1979

The development application described below has been determined:

Description	Change to service station operating hours
Location	Lot 6 Sec 4 DP 758513, Lot 7 Sec 4 DP 758513 149-151 Parkes Street, HELENSBURGH NSW 2508

Consent has been granted subject to the following conditions:

- 1 **Hours of Operation**
 - 1.1 The service station may only operate between 5.00am and 9.00pm.
 - 1.2 The workshop may only operate between 7.00am and 6.00pm.
 - 1.3 The delivery of goods and services may only occur between 8.00am and 6.00pm.
 - 1.4 The delivery of fuel and other products delivered by large trucks may only occur between 8.00am and 6.00pm.
- 2 **Staff Car Parking**
All staff vehicles are to be parked on the site and not in surrounding streets.
- 3 **Other Relevant Development Consents**
The development must comply with conditions of consent attached to Development Consent No. DA-1971/425. The retailing of products other than those solely associated with motor vehicles is permitted (e.g. foodstuffs, small household items, personal care items, media products) but only as an ancillary component to the service station.
- 4 **Disability Discrimination Act 1992**
This consent does not imply or confer compliance with the requirements of the Disability Discrimination Act 1992.

It is the responsibility of the applicant to guarantee compliance with the requirements of the Disability Discrimination Act 1992. The current Australian Standard AS1428.1 – Design for Access and Mobility is recommended to be referred for specific design and construction requirements, in order to provide appropriate access to all persons within the building.

- 5 **Separate Consent Required for Advertising Signage**
This consent does not authorise the erection of any advertising signage. Any such advertising signage will require separate Council approval, in the event that such signage is not “complying or exempt development”, under Wollongong Development Control Plan No 1 – Complying Development or Wollongong Development Control Plan No 2. – Exempt Development.
- 6 **Public Address System**
A public address system or sound amplifying equipment shall not be installed or operated in or upon the property, without the prior consent of Council.
- 7 **No Display of Goods and Materials Outside Premises**
The placement of any cabinet, display stand, racks or any other means of displaying goods, whether or not for sale shall not be located on any property boundary, road reserve or outside the premises.
- 8 **Food Registration**
The service station premises shall be registered with Wollongong City Council’s Environmental and Health Division in accordance with relevant public health and food legislation.
- 9 **Food Premises**
The premises are to comply with the relevant provisions of the Food Act 2003, Food Regulations 2001 and Council’s “Code for Food Premises”.
- 10 **Smoke Free Environment**
The proprietor shall comply with the NSW Health Department “Smoke-Free Environment Act”.

Reasons

The reasons for the imposition of the conditions are:

- 1 To minimise any likely adverse environmental impact of the proposed development.
- 2 To ensure the protection of the amenity and character of land adjoining and in the locality.
- 3 To ensure the proposed development complies with the provisions of Environmental Planning Instruments and Council’s Codes and Policies.
- 4 To ensure the development does not conflict with the public interest.

Notes

- 1 This consent becomes effective and operates from the date shown as “**Endorsement Date**” on the front page of this notice. This consent will lapse unless development is commenced within five years from the endorsement date shown on this notice.
- 2 Section 97 of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within twelve months from the date of receipt of this notice.
- 3 In this consent the developer means the applicant for development consent and any person or corporation who carries out the development pursuant to that consent.
- 4 Section 82A of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of a consent authority a right to request the consent authority to review the determination. The request for review must be made within 12 months after the date on which the applicant received the notice of determination and must be accompanied by the fee set by the Regulations; it does not apply to an application in respect of Designated Development or Integrated Development.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Burgess', with a stylized, cursive script.

Mark Burgess
Senior Development Project Officer
Wollongong City Council
Direct Line (02) 4227 7324