

(ITEM 102/22) DRAFT OUT OF HOURS CONSTRUCTION POLICY - ENDORSEMENT FOR PUBLIC EXHIBITION

File No: 22/36299

REPORT BY MANAGER CITY DEVELOPMENT

Summary

This report recommends the adoption of a policy where a builder/applicant may on application to Council request an extension of construction hours in the specific circumstances of the case.

There has been an assessment of comparable policies adopted by other Councils and there are reasonable circumstances to permit out of hours construction to occur, if appropriate management and mitigation measures are in place.

This report seeks endorsement to place the draft out of hours construction policy on public exhibition for further feedback.

Operational Plan Objective

A.33 Provide efficient, timely development assessment services, including pre-DA support

Background

Council at its meeting 26 July 2022 considered a report from the Director City Strategy regarding extension of working hours for major development sites in the Burwood Local Government Area (BLGA).

Council subsequently resolved that:

1. That the General Manager be authorised to undertake further investigation into the creation of a policy that would permit the extension of working hours for major development sites in the Burwood Local Government Area. This should include adequate and appropriate mitigation requirements on the part of the contractor to minimise impact of out of hours construction, communication requirements to neighbouring property, as well as the possible permit and permit fee framework necessary for a sound and efficient management of such situations.
2. That a further report and, if deemed appropriate, a draft out of hours construction policy be submitted to Council for consideration.

Following further investigation, it is considered appropriate to recommend the policy attached to this report be adopted by Council, subject to the outcomes of community consultation.

Presently hours of construction are controlled via a standard condition imposed upon Development Consents which, depending on location, control construction hours to:

Within the Burwood Town Centre:

Hours of work shall be from 7:00am to 7:00pm Mondays to Fridays inclusive (**during daylight savings period**), 7:00am to 6:00pm Mondays to Fridays inclusive (**outside daylight savings period**) and from 7:00am to 4:00pm on Saturdays. No work shall be carried out on Sundays or Public Holidays. The owner/builder shall be responsible for the compliance of this condition by all sub-contractors, including demolishers.

Outside the Burwood Town Centre:

Hours of work shall be from 7:00am to 6:00pm Mondays to Fridays inclusive, and from 7:00am to 4:00pm on Saturdays. Demolition, excavation and/or construction works that involve heavy machinery, noisy trades or the like are **not permitted** to be carried out from 1:00pm to 4:00pm on Saturdays. No work shall be carried out on Sundays or Public Holidays. The owner/builder shall be responsible for the compliance of this condition by all sub-contractors, including demolishers.

Proposal

Legal advice has confirmed that Council staff do not have the power to vary any conditions of consent on an ad-hoc basis. This means that a formal application to modify the existing development consent must be lodged under section 4.55 of the *Environmental Planning and Assessment Act 1979*.

In the case of modification to hours of construction, such an application must be lodged providing sufficient information to justify an extension being granted and allowing a suitable time frame for the consideration and processing of the application. Typically, the assessment timeframe for this type of application would be two months accounting for public notification and assessment requirements. This is not sufficiently responsive to manage a construction program, moreover it would be inappropriate to change hours of construction for all activities in any regard.

Investigations revealed that a number of Council's (e.g. Inner West, Parramatta, Willoughby, Canada Bay and others), have a mechanism whereby a specific application can be lodged to extend construction hours where it is known that an onsite activity (usually a transfer slab) would require longer than normal working hours to complete. Transfer slabs are usually located at or around ground level and (as the name suggests) transfers loads for the building down to the footing/foundations. Transfer slabs have greater depth, require more concrete, are more heavily reinforced and should be poured in one movement without joins or breaks to ensure structural stability and waterproofing. As such they take a longer time to pour as compared to a normal slab.

Council has also been made aware of circumstances where restrictions from the Transport for New South Wales for sites on Classified or State Roads may require works to be carried out outside of normal construction hours because of restrictions and clearways on these roads.

In discussions with other Council's they require that the specific application to be lodged a set period of time before the event with detailed explanation giving reasons and justification for the proposed extension as well as any mitigating measures relating to noise, dust, lights, traffic management plans, etc. being included in the application.

This is considered to be good practice as it provides both a transparent decision making process to permit out of hours construction and allows Council to monitor individual site circumstances.

On larger sites construction schedules are formulated well in advance so it is feasible and practical for an application for an extension of hours to be lodged and considered by Council well before the event.

The general features of the policy include the following:

- It is proposed that no works will be approved after 10pm at night (daylight saving time), 9pm (non-daylight saving time) or before 6am.
- Should an approval be given it is proposed that it would be the responsibility of the applicant/builder to notify properties within 100m of the site of the extended working hours 5 days before the event.

- It is not intended that the proposed process be utilised for out of hours construction due to unforeseen circumstances, for example breakdown of machinery, or where the application is being lodged for the convenience of the builder or applicant.
- Applications must be lodged a minimum 15 business days before the out of hours activity would occur and with appropriate supporting information.
- The circumstances to which out of hours construction will be permitted are specific, and extended periods (more than two consecutive days) out of hours construction would not be permitted.

It is acknowledged that such a policy has the potential to impact upon the amenity of properties in proximity to a site. This is why the reasons to vary the construction hours in the circumstances must be well weighted and scrutiny of the application must be robust. It is not intended for such an application to be made for every concrete pour in a development. It is only intended for large pours on an individual circumstance where it is not feasible to complete in approved construction hours and/or where other restrictions prevent normal construction proceeding.

Consultation

The policy has not been placed on public exhibition at this time. While there is no legal requirement to publicly exhibit the policy it is considered appropriate to advertise the policy to gauge public sentiment on the matter.

Any feedback will be reviewed and taken into account as part of the finalisation of the policy.

Planning or Policy Implications

Should the policy be adopted by Council it will be necessary to modify Council's standard conditions to include reference to the Policy and submission of an application to Council with the required fee. This will allow flexibility for applications to be lodged and considered appropriately and approved in limited and specific circumstances. The Policy is aimed primarily Business zones however it does not exclude development in the higher density residential zones.

It is not intended that the policy be aimed at Low Density R2 zones.

Financial Implications

Fees for the lodgement and assessment of the application vary considerably from Council to Council. Inner West Council have a fee of \$624 in commercial areas, where City of Parramatta charge an application fee of \$525 and an administration fee of \$2100, in both cases there are no refund of fees in the event that the application is not approved or withdrawn.

It is considered that a flat fee of \$1500 will be sufficient to cover Council's costs for the processing of each application without making the cost of each application unattractive for prospective applicants. The fee will also prevent frivolous applications being lodged as it is intended that an application will not be accepted without the fee being submitted and there will be no refund in the event an application is to be withdrawn or is not approved.

Options

Council has two (2) options in relation to this draft policy.

Option 1

Adopt the draft policy and place on exhibition for public comment or

Option 2

Not adopt the policy and continue with the current practice of not allowing any extension of construction hours outside Council standard conditions.

In the circumstances it is considered reasonable to adopt the draft policy for exhibition purposes to seek community feedback (Option 1) and following any comments from the public refer back to Council for further consideration. If the policy is adopted by Council it can be reviewed after a certain time (2 years) to gauge its effectiveness and see what impact, if any, the policy is creating generally.

Conclusion

It is considered that there is sufficient reason to introduce a policy where it is possible to extend working hours of a site in the individual circumstances. The responsibility for providing sufficient justification to permit an extension of construction hours rests firmly with the applicant as well as providing mitigating measures that will protect the amenity of surrounding properties.

The policy can be put out for public comment and if adopted may be reviewed after a period of time to look at its effectiveness and whether the utilisation of the policy is creating amenity issues.

Recommendation(s)

That:

1. The draft Policy for Out of Hours Construction as included at Attachment 1 to this report be endorsed for the purposes of public exhibition and be exhibited in accordance with Council's Community Participation Plan for a period of 28 days.
2. Following the exhibition of the draft Policy, a report be brought to Council advising of any submissions made and making recommendations on the adoption of the Policy.

Attachments

- 1 Draft Out of Hours Construction Policy