

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 17 October 2016

PE2 – Noise Mitigation Measures for the Wollondilly Poultry Industry

PE2

Noise Mitigation Measures for the Wollondilly Poultry Industry

266876

TRIM 1150

EXECUTIVE SUMMARY

- The purpose of this report is to detail the feedback received from stakeholders regarding fair and reasonable noise mitigation measures that may be applied to the local Poultry Industry.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirement extends to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- It is recommended:
 - That Council note the report and consider the attached condition of consent as an alternative to a night time curfew when assessing future Development Applications.
 - The imposition of a night time curfew for the pick-up of birds be considered when dealing with substantiated and unresolved noise complaints.
 - The community and industry representatives that participated in the recent Noise Mitigation Measures Workshop be acknowledged in writing and congratulated for their considerable effort.

REPORT

BACKGROUND

In March 2016, the local poultry industry through NSW Farmer's Federation raised concern in relation to enforcement action commenced by Council for non-compliance with night time curfew requirements. These discussions resulted in a Council led community consultation initiative to better understand the challenges facing the industry and concerns held by residents.

At the July 2016 Ordinary Meeting, Council considered a report detailing the outcomes of the Poultry Industry Forum and wider consultation. The report recommended that Council engage with relevant stakeholders to discuss fair and reasonable noise mitigations requirements to replace night time curfews.

In relation to this issue, Council resolved (in part):

“That Council engage with representatives of NSW Department of Primary Industries, Environmental Protection Authority, Poultry meat industry and Community representation to discuss possible fair and reasonable noise mitigation requirements for Poultry Farm Operations taking into account that any outcome should be considered on a farm by farm (location by location) basis”.

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RECENT APPROVALS

In 2015, Council determined the following poultry related applications:

- 010.2005.58025.4 – 184B Glendiver Road, The Oaks.
- 010.2012.125.1 – 440 Cawdor Road, Cawdor

The consents for both of these proposals included a night time curfew for the pick-up of birds. The general wording of these conditions is reproduced below:

Condition No 1(a)

Night-time pick up of birds shall not take place between the hours of 10pm and 7am, except where permitted by Condition 1(b).

Condition No 1(b)

Bird pickups are permitted between 10pm and 12am, but only during extreme weather conditions. The persons having the benefit of this consent shall keep accurate records regarding weather conditions and the like should justification be sought if complaints are received by Council in regards to breaching the bird pickup curfew set by Condition 1(a).

ENGAGEMENT INITIATIVES

In early June 2016, a meeting regarding the replacement of night time curfews with restrictions relating to noise generation was held. This meeting, which the NSW Department of Primary Industries convened, was hosted by Council.

A further meeting hosted and convened by Council was held on 29 August 2016. The meeting was attended by relevant State Agencies, NSW Farmer's Federation and community representative.

The following feedback was received from the interest groups at the above meetings.

▪ **Environment Protection Authority (“EPA”)**

Whilst the EPA are not the regulatory authority for any of the poultry farms in the Wollondilly area, the Agency has considerable expertise in terms of noise control and implementation of the NSW Industrial Noise Policy.

The Industrial Noise Policy is a guideline which outlines the criteria under which the impact caused by noise generation is considered acceptable. The criteria is generally based upon the likely background noise level for a location plus an intrusiveness factor.

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Table 2.1 of the Industrial Noise Policy suggests the recommended maximum noise criteria of 45 dB(A) for night time activities in a rural area where the nearest sensitive receiver is a residence (see Attachment 1).

When assessing Development Applications, the EPA suggest Council require a Noise Impact Assessment, which recommends reasonable mitigation measures and nominates realistic noise impacts.

Whilst it depends upon site characteristics and proximity to sensitive receivers the EPA anticipate that most poultry farms would struggle to comply with the noise criteria referred to above.

However the EPA recognise that Council can still resolve to approve development on social and economic grounds. In which case, any consent issued by Council should stipulate achievable noise criteria which is supported by the findings of the Noise Impact Assessment.

▪ **Department of Primary Industries (“Department”)**

The Department has produced a number of publications relating to best practice management of poultry farms. The Department are working on a Practice Note for reducing noise from poultry farms. The Practice Note identifies the potential noise generation activities, the best management practice to reduce noise intrusion and performance criteria for ongoing monitoring. The Department has not distributed the final draft of this document. However its release in the near future is anticipated.

▪ **NSW Farmer’s Federation (“Federation”)**

The Federation has been working with their Victoria counterparts to better understand the management model adopted in that State. The Victorian program is based around the development of an Environmental Management Plan for each poultry operation. The Plan is subject to ongoing review in order to refine operational practices to address concerns raised by neighbours.

The Federation and the Department of Primary Industries have obtained funding for a pilot program in New South Wales based upon the model used in Victoria. It is intended to pilot the program in the Wollondilly area.

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▪ **Community representative**

The community feel poultry farms should be considered on a case by case basis. Those farms located in close proximity to residents require greater controls (i.e. night time curfews). Expansion of these farms may also be limited preventing the establishment of 'super farms'. It is also suggested that the cumulative impact of adjoining farms needs to be considered.

It was suggested that if the industry seeks to rely upon the best practice argument to justify night time pick-ups (i.e. for animal welfare reasons) then the farmers and processors need to adopt best practice initiatives in relation to all aspects of their operations. This includes the use of a modern fleet and forklifts to reduce noise impacts.

It was also suggested that processing companies can assist greatly by appropriately programming their pick-ups. Farms located close to residents should not be programmed for pick-ups in the middle of the night when sleep disturbance to neighbours is a likely outcome.

FAIR AND REASONABLE NOISE MITIGATION REQUIREMENTS

When assessing an application for a new or expanded poultry operation, Council may decide on social and economic grounds to support a proposal despite non-compliance with the guidelines in the Industrial Noise Policy.

Any consent issued by Council could incorporate one or all of the requirements listed below:

- Full compliance with the conclusions and recommendations as detailed in Noise Impact Assessment submitted with the application
- Full compliance with the site management practices including all conclusions and recommendations as detailed in the Environmental Management Plan
- Clean out of the sheds and maintenance operations shall occur between 7:00am and 6:00pm weekdays and 7:00am to 1:00pm Saturdays only
- All truck movements not associated with the movement of live birds shall occur between 7:00am and 6:00pm weekdays and 7:00am to 1:00pm Saturdays only.

In terms of night time pick-ups of birds, Council could require compliance with a curfew except in extreme weather conditions. This is consistent with the current approach and may still be appropriate in certain circumstances.

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Alternatively Council could adopt the following approach:

- Impose a condition of consent that requires compliance with achievable noise criteria as set out in the Noise Impact Assessment
- Attach an advisory note to the condition that requires the poultry grower and processor to enter into mediation should repeated and substantiated noise complaints be received. The advisory note could indicate that unresolved noise complaints of a repeated and substantiated nature may result in enforcement action including fines and imposition of a curfew under the *Protection of the Environment Operations Act*.

The wording of a draft condition that reflects the above intent is provided as Attachment 2 to this report. Advice has been sought from Council's legal representative regarding the validity and enforceability of such a condition. That advice is provided as Attachment 3 to this report.

CONCLUSION

The application of noise mitigation requirements upon the operation of poultry farms is a complex issue which requires consideration of the site features, proximity to neighbours and operational needs.

The community has advocated for consideration of this issue on a case by case basis. That is, each proposal should be considered on its individual merits and a night time curfew may be appropriate in some circumstances.

Alternatively Council could decide, on social and economic grounds, to support a proposal for a new or expanded poultry operation with night time pick-up of birds knowing the noise guidelines stipulated in the Industrial Noise Policy are likely to be exceeded. In which case, the draft condition of consent outlined in this report may provide a fair and reasonable approach to address the challenges facing the industry and concerns raised by residents.

FINANCIAL IMPLICATIONS

The meetings hosted by Council in relation to this matter had no financial impact on Council's adopted budget or forward estimates.

ATTACHMENTS

1. Extract from NSW Industrial Noise Policy (Table 2.1).
2. Draft condition of Development Consent.
3. Legal advice dated 27 September 2016.

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RECOMMENDATION

1. That Council note the report and consider the attached condition of consent as an alternative to a night time curfew when assessing future Development Applications.
2. That the imposition of a night time curfew for the pick-up of birds be considered when dealing with substantiated and unresolved noise complaints.
3. That the community and industry representatives that participated in the recent Noise Mitigation Measures Workshop be acknowledged in writing and congratulated for their considerable effort.

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Table 2.1. Amenity criteria

Recommended L_{Aeq} noise levels from industrial noise sources

Type of Receiver	Indicative Noise Amenity Area	Time of Day	Recommended L_{Aeq} Noise Level, dB(A) <i>(see Note 8 in Section 2.2.1)</i>	
			Acceptable <i>(See Note 11)</i>	Recommended Maximum <i>(See Note 11)</i>
<i>(see Notes in Section 2.2.1)</i>				
Residence	Rural	Day	50	55
		Evening	45	50
		Night	40	45
	Suburban	Day	55	60
		Evening	45	50
		Night	40	45
	Urban	Day	60	65
		Evening	50	55
		Night	45	50
	Urban/Industrial Interface – for existing situations only	Day	65	70
		Evening	55	60
		Night	50	55
School classroom—internal	All	Noisiest 1-hour period when in use	35 <i>(See Note 10)</i>	40
Hospital ward —internal —external	All	Noisiest 1-hour period	35	40
	All	Noisiest 1-hour period	50	55
Place of worship—internal	All	When in use	40	45
Area specifically reserved for passive recreation (e.g. National Park)	All	When in use	50	55
Active recreation area (e.g. school playground, golf course)	All	When in use	55	60
Commercial premises	All	When in use	65	70
Industrial premises	All	When in use	70	75

Where there is a reasonable expectation that the cumulative noise level from industrial sources could increase in future (for example, through the development of further new sources), this should be considered in setting noise levels, as outlined in Section 2.2.4.

NSW industrial noise policy

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Fair and Reasonable Noise Mitigation Measures for the Wollondilly Poultry Industry

Draft Condition and Advisory Note

- Noise between 7:00am and 6:00pm must not exceed 55 dbA LAeq at the nearest residential receiver property boundary or, if that is more than 30 metres from the residence, at the most-affected point within 30 metres of the residence. (Noise between 7:00am and 10:00pm can exceed this noise level once in any 24 hour period by not more than 5 db(A) LAeq 15 minutes).
- Noise between 6:00pm and 10:00pm must not exceed 50 dbA LAeq at the nearest residential receiver property boundary or, if that is more than 30 metres from the residence, at the most-affected point within 30 metres of the residence. (Noise between 7:00am and 10:00pm can exceed this noise level once in any 24 hour period by not more than 5 db(A) LAeq 15 minutes).
- Noise between 10:00pm and 7:00am must not exceed 45 dbA LAeq at the nearest residential receiver property boundary or, if that is more than 30 metres from the residence, at the most-affected point within 30 metres of the residence.
- Clean out of the sheds and maintenance operations shall be between 7:00am and 6:00pm weekdays and 7:00am to 1:00pm Saturdays only.
- All truck movements not associated with the movement of live birds are to be between 7:00am and 6:00pm weekdays and 7:00am to 1:00pm Saturdays only.
- Machinery, equipment, forklifts etc. that have beeping reversing alarms must not be used after 6:00pm.
- Truck engines are to be turned off during bird pick up operations unless entering or leaving the premises.
- Staff, contractors, sub-contractors and the like must abide by a Code of Conduct Agreement with the poultry grower to ensure noise mitigation measures are adhered to when working on site and travelling along surrounding roads.
- All sheds, mechanical equipment, fans, foggers and feed systems must be maintained to minimise the generation of mechanical noise and the likelihood of off-site vibration.

ADVISORY NOTE:

In accordance with Council's Enforcement Policy, where repeated complaint(s) about noise impacts on a sensitive receiver are verified by Council, a mediation process will be initiated involving the poultry farm operator, the processor, the truck operator and Council.

Where the mediation session fails to resolve ongoing and substantiated complaints, Council will consider enforcement action under the Protection of the Environment Operations Act including an Order placing restrictions (i.e. curfew) upon night time pick-up of birds with or without an exception for extreme weather conditions.

A breach (other than an exception as described above) of a curfew imposed by an Order may result in Council issuing a Penalty Infringement Notice (PIN) or commencing prosecution proceedings.

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Confidential

27 September 2016

Our ref: WOL16024
Your ref:

The General Manager
Wollondilly Shire Council
PO Box 21
PICTON NSW 2571

Attention: Chris Stewart

Email

Dear Sir,

Standard Conditions of Consent for Noise Mitigation Measures on Poultry Farms

Introduction

- 1 I refer to the emails from Shari Hussein and Chris Stewart requesting my advice on standard conditions of consent for noise mitigation measures for new or expanded poultry farms.
- 2 I understand that Council officers are considering approaches to regulating the noise impacts from new or expanded poultry farms without having to impose a night time curfew for the pick up of birds.
- 3 I have been asked to advise on whether the approach contained in the draft conditions would be legally enforceable.

Summary of advice

- 4 In my opinion, the approach suggested by Council officers would be legally enforceable, although Council would need to approach any enforcement action on a case by case basis.
- 5 I recommend that the wording of the condition for developments that fully comply be slightly amended to better define what is meant by 'noise criteria'.
- 6 Council may also wish to remove the reference to compliance with 'conclusions' of a noise impact assessment.
- 7 Council should include additional conditions for non-complying developments incorporating any recommendations of a noise assessment report accompanying a development application.

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8 The enforcement strategy as contained in the advisory note would not be enforceable as a condition of consent under the *Environmental Planning and Assessment Act 1979*.

Advice

Proposed conditions

9 The draft report to Council (**Report**) makes reference to the Industrial Noise Policy (**INP**) of the Environment Protection Authority (**EPA**).

10 The approach proposed by Council officers depends on whether the proposed use will comply with the noise criteria contained in the INP.

11 For those developments that fully comply, the following conditions (**Consent Conditions**) are proposed:

Full compliance with the noise criteria, including all conclusions and recommendations as detailed in Noise Impact Assessment prepared by <NAME>, dated <XX/XX/XX>

Full compliance with the site management practices including all conclusions and recommendations as detailed in the Environmental Management Plan prepared by <NAME>, dated <XX/XX/XX>.

12 For those developments that do not comply, the following conditions (**Noise Criteria Conditions**) are proposed:

Noise between 7:00am and 6:00pm must not exceed 55 dbA LAeq at the nearest residential receiver property boundary or, if that is more than 30 metres from the residence, at the most-affected point within 30 metres of the residence. (Noise between 7:00am and 10:00pm can exceed this noise level once in any 24 hour period by not more than 5 db(A) LAeq 15 minutes).

Noise between 6:00pm and 10:00pm must not exceed 50 dbA LAeq at the nearest residential receiver property boundary or, if that is more than 30 metres from the residence, at the most-affected point within 30 metres of the residence. (Noise between 7:00am and 10:00pm can exceed this noise level once in any 24 hour period by not more than 5 db(A) LAeq 15 minutes).

Noise between 10:00pm and 7:00am must not exceed 45 dbA LAeq at the nearest residential receiver property boundary or, if that is more than 30 metres from the residence, at the most-affected point within 30 metres of the residence.

Clean out of the sheds and maintenance operations shall be between 7:00am and 6:00pm weekdays and 7:00am to 1:00pm Saturdays only.

All truck movements not associated with the movement of live birds are to be between 7:00am and 6:00pm weekdays and 7:00am to 1:00pm Saturdays only.

Machinery, equipment, forklifts etc. that have beeping reversing alarms must not be used after 6:00pm.

Truck engines are to be turned off during bird pick up operations unless entering or leaving the premises.

Staff, contractors, sub-contractors and the like must be educated on noise mitigation measures and limiting the use of compression breaking etc.

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All sheds, mechanical equipment, fans, foggers and feed systems must be maintained to minimise the generation of mechanical noise and the likelihood of off-site vibration.

- 13 In addition, it is proposed that in the case of non-complying development, an advisory note be included in the condition highlighting how breaches of the conditions would be handled.
- 14 As I understand the situation, the matters in the advisory note reflect Council's Enforcement Policy.
- 15 Broadly speaking, the advisory note sets out three phases of complaint handling, being mediation, 'curfew with exception' and 'order'.

Discussion

- 16 In my opinion, the approach set out in the proposed conditions themselves is reasonable and would generally be legally enforceable.
- 17 It would obviously be necessary for Council to consider any possible enforcement action having regard to the particular circumstances of the case.
- 18 In relation to the Consent Conditions, I suggest that the term 'noise criteria' be better defined to avoid any confusion as to what it is referring.
- 19 In addition, Council may wish to remove any reference to compliance with a 'conclusion' of the noise impact assessment as it is unclear how this could be achieved.
- 20 In relation to the Noise Criteria Conditions, an important consideration for Council when considering a particular development application will be whether it has given proper consideration to the noise impacts of the development. If it fails to do so then it may not have lawfully discharged its statutory obligations under s79C(1) of the *Environmental Planning and Assessment Act 1979 (EPA Act)*.
- 21 For example, it would not be open to Council to grant development consent to a development that did not comply with the INP by imposing the Noise Criteria Conditions without properly considering the actual noise impacts of the proposed development.
- 22 Further, Council should include additional conditions for non-complying developments incorporating any recommendations of a noise assessment report accompanying a development application.
- 23 However, so long as Council has properly considered the noise impacts of the development, it would not necessarily be unlawful for it to grant development consent to a development application that did not comply with the standards contained in the Noise Criteria Conditions.
- 24 The proposed advisory note sets out Council's approach to enforcement for failures to comply and of itself would not be enforceable under the EPA Act.
- 25 In addition, having regard to the approach taken in the proposed conditions, it is doubtful in my view whether an order could be given under the EPA Act imposing a 'curfew' in the event that the conditions of consent were breached.
- 26 The only apparent basis for an order under the EPA Act would be under s121B of the EPA Act, but I cannot see which order could lawfully impose a 'curfew' where the conditions of consent do not require that.
- 27 It may be that there is a power to impose a curfew under the *Protection of the Environment Operations Act 1997 (POEO Act)*.

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- 28 In any event, the existence of a power under the POEO Act to impose a 'curfew' could not rely on a breach of a condition of consent imposed under the EPA Act.
- 29 Ultimately, it is a matter for Council as to whether it wishes to include the advisory note in any conditions of consent.
- 30 Whilst the advisory note would not in and of itself be enforceable, Council may consider that its inclusion has some benefit in that it communicates its enforcement strategy with the developer and members of the public.
- 31 I trust that the above advice is of assistance. Please contact Chris Campbell if you wish to discuss the advice or have any questions.

Yours Sincerely,

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