



# BUSINESS PAPER

Infrastructure and Environment  
Committee Meeting

Council Chambers  
9 December 2024

5.30pm

**BROKEN HILL**

CITY COUNCIL

**AUSTRALIA'S FIRST  
HERITAGE LISTED CITY**

## **MEMBERS OF THE INFRASTRUCTURE AND ENVIRONMENT COMMITTEE**

Mayor Kennedy, Deputy Mayor Hickey (Chairperson) Councillor Algate, Councillor Byrne, Councillor Chandler and Councillor Gallagher

Notice is hereby given, in accordance with the provisions of the *Local Government Act 1993*, that the Infrastructure and Environment Committee of the Broken Hill City Council will be held in the Council Chambers on **Monday 9 December 2024** commencing at **5:30pm** to consider the following business:

<b>AGENDA</b>	
1	Opening the Meeting
2	Apologies
3	Leave of Absence Applications
4	Prayer
5	Acknowledgement of Country
6	Acknowledgement of Broken Hill's Mining History
7	Minutes for Confirmation
8	Disclosure of Interest
9	Reports
10	Confidential Matters
11	Conclusion of the Meeting

### **STATEMENT OF ETHICAL OBLIGATIONS**

All Councillors undertook an Oath or Affirmation at the beginning of their term of office and declared to undertake the duties of the office of Councillor in the best interests of the people of the Broken Hill Local Government Area and the City of Broken Hill; and that they will faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the *Local Government Act 1993* or any other Act to the best of their ability and judgment.

### **LIVE STREAMING OF COUNCIL MEETINGS**

This Committee Meeting is being livestreamed via YouTube and recorded and published online via Council's website. To those present in the meeting today, by attending in this public meeting you are consenting to your image, voice and comments being recorded and published.

The Chairperson and/or General Manager have the authority to pause the livestream if comments or debate are considered defamatory or otherwise inappropriate for publishing.

Participants are advised that they may be subject to legal action if they engage in unlawful behaviour or commentary.

**JAY NANKIVELL**  
**GENERAL MANAGER**

# MINUTES FOR CONFIRMATION

Minutes of the Works Committee of the City of Broken Hill held Monday, July 22, 2024.



**MINUTES OF THE WORKS COMMITTEE MEETING HELD MONDAY, JULY 22,  
2024 (5:30 PM)**

**PRESENT:**

Mayor T Kennedy (Mayor), Councillors M Boland (Chairperson),  
B Algate, A Chandler

General Manager, Director Corporate and Community, Director  
Infrastructure and Environment, Manager Communications and Marketing,  
Executive Officer and Executive Assistant.

Media (nil), Members of the Public (nil)

**APOLOGIES:**

Councillor R Page

Procedural Motion

Moved Mayor Tom Kennedy, Seconded Councillor Bob Algate

That the apology submitted on behalf of Councillor Page be accepted

CARRIED UNANIMOUSLY

**LEAVE OF ABSENCE**

**APPLICATIONS:** Nil

**PRAYER**

Mayor Kennedy delivered the Prayer.

**ACKNOWLEDGEMENT OF COUNTRY**

Councillor Chandler delivered the Acknowledgement of Country.

**ACKNOWLEDGEMENT OF BROKEN HILL'S MINING HISTORY**

Councillor Page delivered the Acknowledgement of Broken Hill's Mining History.

**MINUTES FOR CONFIRMATION**

**Recommendation**

**Moved Mayor Tom Kennedy, Seconded Councillor Bob Algate**

That the Minutes of the Works Committee meeting held Monday June 17, 2024 be confirmed.

CARRIED UNANIMOUSLY

**DISCLOSURE OF INTEREST**

Nil.

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## REPORTS

1. BROKEN HILL CITY COUNCIL REPORT NO. 114/24 - DATED JUNE 14, 2024 - MINUTES OF THE PROJECT CONSULTATIVE GROUP PROJECT STEERING GROUP MEETING HELD 16 MAY 2024 D24/29512

**Recommendation**

Moved Councillor Bob Algate, Seconded Councillor Alan Chandler

1. That Broken Hill City Council Report No. 114/24 dated June 14, 2024, be received.
2. That the minutes of the Project Consultative Group Project Steering Group from 16 May 2024 be noted.
3. That the PowerPoint Presentation of the Project Consultative Group Project Steering Group from 16 May 2024 be noted.

**CARRIED UNANIMOUSLY**

*The General Manager took on notice a question from the Mayor to promote the status of Council's current and future projects as detailed in the Project Consultative Group Project Steering Group Minutes as they contain a good overview of Council's projects and address many of the questions asked by the public.*

*The General Manager agreed to place a summary of the report on Council's Facebook page and other media platforms.*

2. BROKEN HILL CITY COUNCIL REPORT NO. 115/24 - DATED JULY 05, 2024 - MINUTES OF THE LOCAL TRAFFIC COMMITTEE - MEETING NO.448, HELD ON TUESDAY, 2 JULY 2024 D24/33447

**Recommendation**

Moved Councillor Alan Chandler, Seconded Mayor Tom Kennedy

1. That Broken Hill City Council Report No. 115/24 dated July 5, 2024, be received.
2. That the minutes of the Local Traffic Committee – Meeting No.448, held on Tuesday, 2 July 2024 be endorsed.
3. That Item No.448.8.1 recommendation be received:
  - Council to forward correspondence to the businesses located in the shopping complex on Oxide Street, between Wolfram Lane and Mica Street, asking for feedback regarding the request to convert a one-hour parking space to a 15-minute parking space at the Wolfram Lane end of the complex, to facilitate short-term parking for customers.

**CARRIED UNANIMOUSLY**

*The General Manager took on notice a question from the Mayor to promote the Traffic Committee's investigations and recommendations to Council regarding various traffic related matters raised by*

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members of the community.

The General Manager agreed to place a summary of the report on Council's Facebook page and other media platforms.

3. BROKEN HILL CITY COUNCIL REPORT NO. 116/24 - DATED JUNE 18, 2024 - MINUTES OF THE PICTON SPORTSGROUND COMMUNITY COMMITTEE MEETING HELD 03 JUNE 2024 D24/29828

**Recommendation**

**Moved Councillor Bob Algate, Seconded Councillor Alan Chandler**

- 1. That Broken Hill City Council Report No. 116/24 dated June 18, 2024, be received.**
- 2. That minutes of the Picton Sportsground Community Committee meeting held 03 June 2024 be received.**
- 3. That Council sends a letter of congratulations to Mr Noel Hannigan acknowledging his 35 years' of service as a volunteer on Council's Picton Sportsground Community Committee.**

**CARRIED UNANIMOUSLY**

There being no further business to consider, the meeting was declared closed at 5:42pm.

The foregoing minutes were read and confirmed at the Infrastructure and Environment Committee meeting held on 9 December 2024.

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Chairperson

# REPORTS

1. BROKEN HILL CITY COUNCIL REPORT NO. 190/24 - DATED NOVEMBER 26, 2024 - DEVELOPMENT APPLICATION 59/2024 - CHANGE HOURS OF OPERATION (ATTARDS TRANSPORT SERVICE) - 117 RAKOW STREET, BROKEN HILL (D24/57175)..... 8

## INFRASTRUCTURE AND ENVIRONMENT COMMITTEE

November 26, 2024

**ITEM 1**BROKEN HILL CITY COUNCIL REPORT NO. 190/24

SUBJECT: DEVELOPMENT APPLICATION 59/2024 - CHANGE HOURS OF OPERATION (ATTARDS TRANSPORT SERVICE) - 117 RAKOW STREET, BROKEN HILL D24/57175

**Recommendation**

1. That Broken Hill City Council Report No. 190/24 dated November 26, 2024, be received.
2. That Development Application 59/2024 be approved, subject to the following conditions:
  - a) That the hours of operation shall be restricted to:  
7am to 9pm Monday to Friday,  
7am to 6pm Saturday and Sunday.
  - b) That management procedures must be implemented which outlines that trucks are not to be left unnecessarily idling; and also that all drivers are aware of the approved hours of operation.
  - c) The emission of intrusive noise from the premises shall be controlled at all times in accordance with the *Noise Policy for Industry (2017)* so as to not unreasonably impact nearby residential receivers.
  - d) Any external lights shall be operated and maintained in accordance with *AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting* so as not to cause a nuisance or adverse impact on the amenity of occupants of the surrounding area or to motorists on nearby roads. All lights must be directed so as to not shine directly into neighbouring properties.

**Executive Summary:**

A Development Application has been submitted, seeking consent to change approved operation hours at Attards Transport, being 117 Rakow Street. The applicant is Ms. Bronte Steele, on behalf of Attards Transport Service.

The Application seeks approval for operations onsite to cover 6am to 12 midnight, 7 days per week.

The Application has been submitted as a result of investigations carried out by Council staff due to a neighbour complaint received about alleged nuisance caused from the Attards operations. The investigations showed that the most recent approved hours of operation for the Attards site was 7am – 6pm, Monday to Friday and 7am – 12pm (noon) on Saturday with no work on Sunday or Public Holidays.



Council is to determine the Development Application, by either resolving to approve or to refuse the application. If the Application is refused, the hours of operation for the property would revert back to the most recent approved hours.

**Report:**

Development Application 59/2024 relates to the existing road transport business located at 117 Rakow Street.

The land is zoned 'E4 – General Industrial' under the *Broken Hill Local Environmental Plan 2013*.

This Application has been submitted as a result of investigations carried out by Council staff due to a neighbour complaint received about alleged nuisance caused from the Attards operations. The investigations showed that the most recent approved hours of operation for the Attards site was 7am – 6pm, Monday to Friday and 7am – 12pm (noon) on Saturday with no work on Sunday or Public Holidays.

The proposal is seeking permitted hours of operation to be 6am to 12 midnight.

The following information was provided by the applicant to support the Development Application:

*“Attards Transport Service has been in operation for over 50 years and is now managed by the third generation of the Attard family.*

*We are a family owned and operated general freight company that proudly service the local Broken Hill community and surrounding towns and properties.*

*117 Rakow Street, Broken Hill has been our head office since approximately 1988.*

*As the years have gone by and times have changed, we are needing to change the hours of operation of our business on our premises to accommodate the arrival and departure times of our interstate trucks.*

*We have two interstate trucks. On a very rare occasion there could be three trucks.*

*Our trucks are modern and have a low noise output when idling. Out of respect for others that live in the neighbourhood, our drivers turn off their truck engine and lights as soon as practicable once in the depot during the evening hours.*

*Monday to Friday night (excluding public holidays) are the nights that our trucks will arrive/depart most regularly. On the odd occasion a Saturday or Sunday night.*

*Our Monday to Friday hours of operation is 7am to 3:30pm. Saturday 7am to approximately 10:00am. During busy times and extreme weather conditions will see our need to begin operations earlier than 7am and concluding earlier in the afternoon or on a busy day a later than 3:30pm”.*



As a history of the site, Council records indicate that the site at 117 Rakow Street has been used for business and industrial use for approximately 50 years. Records indicate that in the 1980s the site was used for the display and sale of caravans, and that the site also had a history of use as a builders supplies business.

In 1991, a Local Environmental Plan was approved to permit (with Council's development consent), the development of the land as a road transport terminal.

Subsequent Development Application 60/1991 was approved in February 1992, permitting use of the land for "road transport terminal". The approval did not include any conditions which restricted the hours of use of the site.

In June 2000, Development approval was granted to allow for the construction of a storage shed. This approval included a condition relating to hours of operation.

The condition noted *"That the hours of operation shall be restricted to 7am – 6pm Monday to Friday and 7am – 12 pm (noon) on Saturday with no work on Sunday or Public holidays"*.

It should be noted that the zoning of the site at the time of the 2000 DA, was not a strictly "Industrial" zone but was 2c City zone. The 2c zoning at the time covered most of Broken Hill and was a flexible zone in that many development proposals could be considered, subject to Development approval.

**ASSESSMENT:**

All Development Applications are required to be assessed by Council in accordance with the provisions of section 4.15 of the *Environmental Planning and Assessment Act 1979*.

**CONSIDERATIONS UNDER SECTION 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:****Section 4.15(a) (i) The provisions of any environmental planning instrument Broken Hill Local Environmental Plan 2013 (LEP)**Aims of the Plan

The aims of the LEP are:

- (a) to encourage sustainable economic growth and development in Broken Hill,
- (b) to encourage and provide opportunities for local employment growth, and the retention of the population, in Broken Hill,
- (c) to encourage the retention of mining and acknowledge that industry's heritage and regional significance,
- (d) to identify, protect, conserve and enhance Broken Hill's natural assets,
- (e) to identify and protect Broken Hill's built and nationally significant cultural heritage assets for future generations,
- (f) to provide for a range of housing types and living opportunities,
- (g) to allow for the equitable provision of services and facilities for the community,
- (h) to provide for future tourist and visitor accommodation in a sustainable manner that is compatible with, and will not compromise, the natural resource and heritage values of the surrounding area.

The aims or objectives of the plan are not compromised by the proposed development.

Zone Objectives

The subject site is zoned E4 General Industrial.

The objectives of the zone are:

- To provide a range of industrial, warehouse, logistics and related land uses.
- To ensure the efficient and viable use of land for industrial uses.
- To minimise any adverse effect of industry on other land uses.
- To encourage employment opportunities.
- To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.

It is noted that the proposal complies with the objectives in that it is providing a warehouse/logistics type land use. Of interest is that an objective of the zoning is "*To minimise any adverse effect of industry on other land uses*".

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Other relevant LEP Clauses

Not Applicable.

There are no LEP clauses which specifically relate to this DA.

Far West Regional Plan

The Plan is a higher level strategic plan, and there are no actions in the Plan which specifically relate to a proposal such as this DA.

State Environmental Planning Policy

Not Applicable.

**Section 4.15 (a) (ii) Any proposed Environmental Planning Instruments**

Not Applicable.

**Section 4.15 (a) (iii) Any Development Control Plan (DCP)**Broken Hill Development Control Plan 2016

Chapter 3 – Industrial development

Much of this chapter of the DCP relates to guidance around construction of new industrial premises.

However, of interest to this DA, one that the following provisions in this chapter is:

- All industrial activity is to be conducted to avoid unnecessary or unreasonable noise, particularly at night.

*The Environmental Law in NSW Handbook* (2016) outlined that whilst DCPs must be considered as part of the assessment process, it should be noted that (unlike LEPs), DCPs are not legally binding, even though they might spell out planning guidelines and/or standards.

**Section 4.15 (a) (iv) Any Matters Prescribed by the Regulations**

Not applicable.

**Section 4.15 (a) (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

Not applicable.

**Section 4.15(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality.**

Key issues relate to noise, and lighting and potential impact on the neighbourhood.

In relation to noise, a key point is that the nighttime period is obviously the most noise-sensitive period. Background noise levels are lower at night in urban areas compared to day and therefore the sound of trucks and associated unloading equipment is going to have a greater impact compared to during the day where the sound will be buffered somewhat by other activities in the area.

Further comment is provided later in this report under the “submissions” section.

In relation to lighting, this can be mitigated by truck drivers turning off their vehicles as soon as practicable on site. Australian Standard 4282 “Control of the obtrusive effects of outdoor lighting” is required to be complied with. In an instance such as an existing premises, this could be achieved by ensuring that the lighting is directed downwards to only light the area needed.

The EPA’s *Noise Policy for Industry* notes “The range of noise reduction strategies for existing situations is generally more limited than those available for new development at the planning stage. For example, spatial separation between the source and receiver is not an option for existing situations. The initial focus for existing sites should be operational procedures and prioritising noise-control measures that provide the greatest benefits to residents at least cost”.

**Section 4.15(c) Suitability of the site for the development**

The site is not subject to any natural hazards such as bushfire risk, mine subsidence etc.

Utility services are available to the site and able to be upgraded if required. Any service alterations will be subject to the requirements of the local utility service providers.

The site does not contain any easements or restrictions.

The site has a history of industrial and business use and is within an industrial zone under the local planning controls. The locality is a mix of business, light industrial and residential properties.

**Section 4.15(d) Any submissions made in accordance with the Act or Regulations**

The application was notified to neighbours within a 100-metre radius of the site.

As a result, 1 objection was received.

From Council records, the objector appears to have owned the neighbouring property since 2019. (There are indications that their family may have owned the property for many years prior).

The neighbour’s property is also within the E4 zone, however has been a residence for many years and enjoys existing use rights to continue legal use as a residence.

The objector provided 6 “attachments” (videos) to Council to support their objection. The videos showed operations occurring during nighttime hours. These operations included use of forklifts, rearranging of trucks, and trucks idling. 1 file was date stamped. The others did not contain date stamps on the videos. (The objection alleged that the videos were taken on 14 March, 15 March, 10 May, 13 May, 24 July and 7 August 2024).

It is noted that the objector, had some months earlier lodged a Complaint with Council regarding stormwater, and it was during Council staff investigation of that matter, that further concerns were raised by the neighbour - including matters around the hours of operation, proximity of diesel tank to the neighbouring fence, and dispute over land status.

(The subject of this DA relates only to the hours of operation. The other matters raised by the neighbour do not relate to this DA, and have been part of ongoing discussion and investigation by Council staff).

**Points outlined in neighbour objection:**

Issue	Objection comment	Assessment comment
Use out of hours not only trucks	<p>On a regular basis the current ‘out of hours’ operation is not solely restricted to the comings and goings of trucks.</p> <p>Operations can include the operation of forklifts to load and unload trucks as well as the rearrangements of trucks, including with reversing</p>	<p>Noted. The applicant has advised that reverse beepers are legislated requirements.</p> <p>“Rearrangement of trucks” is the linehaul driver unhooking from the trailer he has bought from Adelaide to Broken Hill and then hooking onto another</p>

	<p>warning sounds within the yard.</p>	<p>trailer to take it back to Adelaide with freight on it.</p>
<p>Noise</p>	<p>Although Attard’s Transport, in their application, states their trucks ‘are modern and have a low noise output when idling’ and ‘Out of respect for others that live in the neighbourhood, our drivers turn off their truck engine and lights as soon as practicable once in the depot during the evening hours’.</p> <p>At approximately midnight these comments are arguable. The reality is these trucks are, including their idling times of sometimes over half an hour, are actually quite a nuisance from both their noise and their lighting from a neighbour’s perspective. On nights where there sometimes are the three trucks, as indicated in Attard’s Application, the disturbance in effect prevents neighbours to the right to the quiet enjoyments of their property.</p>	<p>It is agreed that there is likely to be a disturbance to directly adjoining neighbours if trucks were left idling for a long period of time, particularly during the most sensitive nighttime periods.</p> <p>Management plans could be put in place (education of drivers, installing signs onsite etc) to require the trucks be shut off and not left idling. This however does not ensure that drivers will always comply. If it is imposed as a condition of consent, then non-compliance can result in issuing of fines. (This however would then require hard evidence of non-compliance and ongoing monitoring).</p>
<p>Acoustic barrier</p>	<p>Should Council consider approving this Application, “We as neighbours insist that the installation of a sound barrier to reduce the impact of the noise made by Attard’s Transport during their evening and late-night activities must be a condition of the approval”. This sound barrier would be significantly important as the warmer weather approaches and during this time there is an increase in activity at Attard’s ‘after hours’ operations. An adequate sound barrier would also reduce the light disturbances made by not only trucks arriving and departing, but also the lights that are on in Attards yard all night.</p> <p>The installation of a sound/light barrier would</p>	<p>EPA’s “Noise Guide for Local Government” outlines feasible and practical ways which can manage noise.</p> <p>The Guide notes that <i>Barriers are most effective when they are located close to the noise source (ie Attards yard) or the noise receiver (objector) and block the line of sight between the source and receiver. The extent of any noise reduction will depend on the height and mass of the barrier and the frequency-content of the noise source (barriers are less effective for low-frequency noise). Noise barriers should have no gaps and use absorptive material to reduce noise levels by minimising reflections.</i></p>



	<p>assist in reducing the disturbances experienced by neighbours who would be expected to put up with the excessive noise for up to 18 hours a day during the busiest of periods.</p>	<p>(Diesel engines that power most trucks when idling or operating at low engine revolutions can generate low frequency noise).</p> <p>As the complaint and concerns relate to a number of matters including truck movements in and out of the property from public roads (requiring opening of gates etc), use of forklifts, and lighting – it is considered that whilst an acoustic barrier/fence may assist to an extent, it would not result in a totally soundproof environment and not likely to be fully address all concerns. The cost would be high and likely outweigh the end benefit.</p> <p>The EPA Noise policy for Industry notes that mitigation strategies when dealing with noise need to consider “<i>cost of mitigation—cost of mitigation versus benefit provided</i>”.</p> <p>The EPA’s Guide, outlines the following as examples of practical ways in which noise at the source can be reduced or managed:</p> <ul style="list-style-type: none"> <li>• <i>Schedule the noisy activity for a less-sensitive times of day. Where there are several noisy pieces of equipment, schedule operations so they are used separately rather than concurrently.</i></li> <li>• <i>Employ quiet practices when operating equipment: for example, position idling trucks in appropriate areas or require trucks to turn engines off rather than idle for long periods.</i></li> </ul>
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**Applicant response to points of objection:**

The applicant was offered the opportunity to respond to the points raised in the objection submitted. As a result, the following response was provided by Attards Transport:

*Kristian Attard and myself, Bronte, are the third generation running our family business that has served our local community for well over 60 years.*

- 1- *We only work at night if we desperately need to and I'm sure (unless they can provide us with photos and dates) we have only worked at night twice in the last 12 months, it's not feasible nor cost effective for us to work at night. I have already pre-sorted our first Chrisco run to turn up on the Saturday morning, basically the day we start hamper deliveries, so we are not unloading chiller at 8pm when the truck arrives into Broken Hill on the Friday night.*
- 2- *Reverse beepers are a legal requirement on all heavy vehicles.*
- 3- *We have already changed the travel times on our line haul trucks to ensure they arrive at our Broken Hill depot in a reasonable time frame opposed to later at night like it once was. If Council are interested I would love to invite them to our depot with a decibel monitor to actually see what our decibels come to when a line haul truck is in our depot unhooking. I feel they will find it's not as loud as what has been made to sound like.*
- 4- *We don't unload Saturday mornings anymore and only do the bare minimum required with minimum noise created, this has already been a cost to our business in lost revenue.*
- 5- *At a time yes it was possible for a driver to drive into our depot at night with hi beam on (but not the whole time) just for extra light to ensure they don't run over anything (on many occasions the neighbour's dog and chickens have come into our depot during the day and night). All drivers have been instructed to stay on low beam and also minimise idle time in the yard, idle time is extra fuel burn and drivers are instructed even on the hi way to minimize idle time at all times.*
- 6- *In regard to the security light on the coke shed, this was positioned there many years ago and well before the neighbour moved in for security reasons. At the time we had weekly intruders coming into our depot and stealing lights off our trucks and since the light was installed we have had almost no issues at all.*
- 7- *It will not be viable for Attards Transport to build a form of light and sound suppression fence; this would be well out of our budget but if council could provide us with some form of grant we can look into it.*
- 8- *If we are unable to make council and the neighbour happy and move forward our only other option would be at the end of June 2025 we will cease trading as Attards Transport Service, close both our Broken Hill NSW and Wingfield SA depots putting about 20 people out of work.*

Section 4.16 of the *Environmental Planning and Assessment Act 1979* sets out that Council is to determine a development application by:

- (a) granting consent to the application, either unconditionally or subject to conditions, or
- (b) refusing consent to the application.

Conditions of consent are able to be imposed under Section 4.17 of the *Environmental Planning and Assessment Act 1979*. The courts have determined that, for a condition to come within the relevant statutory power, it must meet the 'Newbury Test', which requires a condition to:

- Be imposed for a planning purpose.
- Fairly and reasonably relate to the development for which permission is being given.
- Be reasonable.

### **Conclusion:**

It is acknowledged that the site has been in operation for many years as a road transport terminal. Up until the current situation, there have been sporadic complaints reported to Council on a handful of occasions over the many years of operation of the business. Operators of the business have on a number of occasions in the past been reminded by Council of their obligations to comply with the approved hours and to minimize nuisance to the neighbourhood.

Despite the business being located and operated within an Industrial zone, there is still an obligation to ensure that the operations do not unreasonably impact on other properties within the neighbourhood. Legislation and State agency Guides including *Protection of the Environment Operations (Noise Control) Regulation* and the EPA's *Noise Policy for Industry* provide controls which ensure that existing businesses and industries operate in a manner that do not cause offensive and unacceptable nuisance.

A key point when determining any Development Application is that Council is considering a proposal within what is primarily a merit-based assessment system. Benefits of a development must be weighed up against the negatives. Where there are negatives, consideration can be given to whether those negatives can be mitigated or managed through imposing conditions on a consent.

Whilst the increased hours of operation are not intended to be utilised regularly by Attards (but more so on an "as needed basis"), the fact would remain that once approved it would provide for potential industrial/business use at the site of 6am to 12 midnight any day. Approval of these hours through this Development application apply to the land, and not just for the actual current business owner. A development consent is an enduring instrument that "stays with the land" (unless modified or a new application submitted changes the circumstances, such as in this case).

It is noted that much of the dividing fencing between Attards yard, and the adjoining neighbour is in poor condition and not very high. Dividing fencing is a civil matter which is usually agreed upon between neighbours. It is highly recommended that higher fencing be considered as this may assist in mitigating concerns between the two parties.

It is considered that the most appropriate outcome from this Application is for a determination which considers both competing sides.

The business is a long-running local family business, which has operated at the site for approximately 35 years. Times have changed over these years, resulting in the need to increase the approved hours of business. The needs of the business need to be balanced with ensuring that unnecessary nuisance is caused as a result of the business operations.

**Recommendation:**

It is recommended that consideration be given to increasing the approved hours from the current 7am – 6pm Monday to Friday and 7am – 12 pm (noon) on Saturday with no work on Sunday or Public holidays.

Suggested approval under this Application would change hours to:

7am to 9pm Monday to Friday, and 7am to 6pm Saturday and Sunday.

These hours are considered to still allow greater flexibility for the business than they currently enjoy and also reflect that the area is a mixed-use industrial zoned area, whilst maintaining that a residential neighbour should not necessarily be experiencing the impact of deliveries and associated activities late at night past 9pm.

**Community Engagement:**

The application was notified to neighbours within a 100-metre radius of the site. As a result, 1 objection was received.

**Strategic Direction:**

Key Direction:	4	Our Leadership
Objective:	4.1	Openness and transparency in decision making
Strategy:	4.1.1	Support the organisation to operate within its legal framework

**Relevant Legislation:**

*Environmental Planning and Assessment Act 1979*

**Financial Implications:**

Nil

**Attachments**

1. [↓](#) Recommended conditions of consent

CODIE HOWARD  
DIRECTOR INFRASTRUCTURE AND ENVIRONMENT

JAY NANKIVELL  
GENERAL MANAGER

**117 Rakow Street – Attards Transport.**

**Recommended conditions of consent – DA 59/2024**

That the hours of operation shall be restricted to:

7am to 9pm Monday to Friday,

7am to 6pm Saturday and Sunday.

That management procedures must be implemented which outlines that trucks are not to be left idling for any longer than necessary; and also that all drivers are aware of the approved hours of operation.

The emission of intrusive noise from the premises shall be controlled at all times in accordance with the *Noise Policy for Industry* (2017) so as to not unreasonably impact nearby residential receivers.

Any external lights shall be operated and maintained in accordance with *AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting* so as not to cause a nuisance or adverse impact on the amenity of occupants of the surrounding area or to motorists on nearby roads. All lights must be directed so as to not shine directly into neighbouring properties.



CITY COUNCIL

[www.brokenhill.nsw.gov.au](http://www.brokenhill.nsw.gov.au)