

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

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325 Scroggies Road, Lakesland**

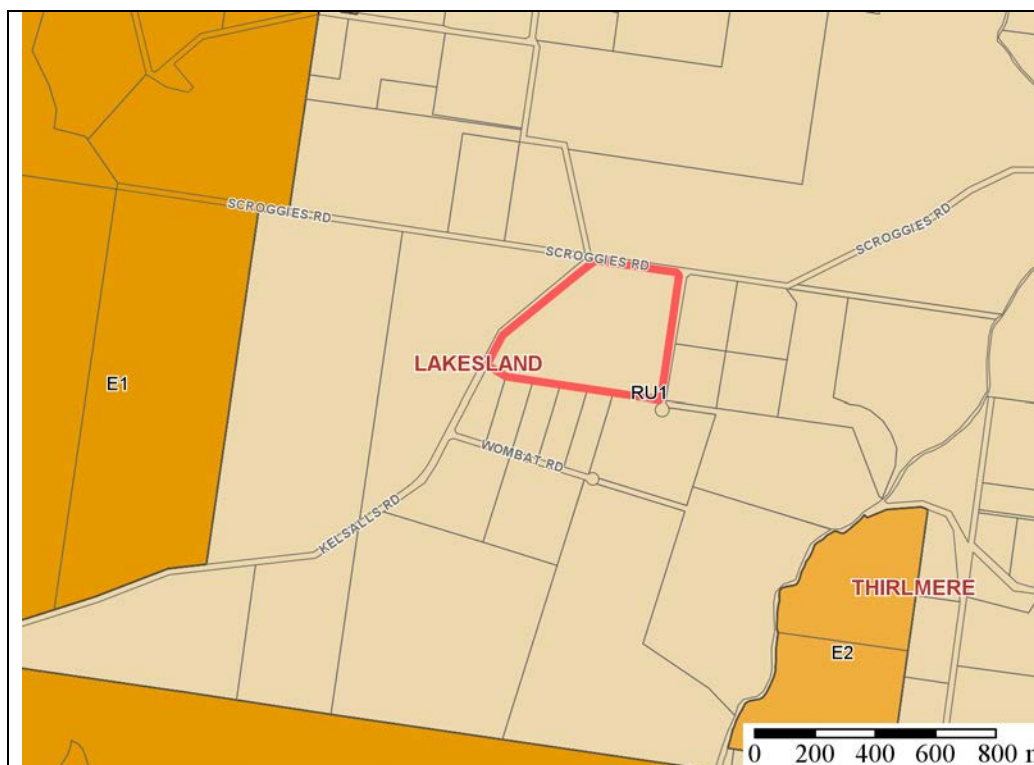
PE3

**Application to Modify Consent No. 010.2002.00058844.002 – 325 Scroggies Road, Lakesland – Amend Condition 9.3 and Delete Condition 9.7**

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DD010.2002.00058844.002

Planning & Economy



LOCATION MAP  N

**DEVELOPMENT INFORMATION**

<b>Application No:</b>	<b>010.2002.00058844.002</b>
<b>Property Address:</b>	<b>325 Scroggies Road, Lakesland</b>
<b>Applicant:</b>	<b>F Buttigieg c/- Precise Planning</b>
<b>Owner:</b>	<b>F &amp; M Buttigieg</b>
<b>Proposal Details:</b>	<b>Amend Condition 9.3 and Delete Condition 9.7</b>
<b>Zone:</b>	<b>RU1 Primary Production</b>

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

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325 Scroggies Road, Lakesland**

**EXECUTIVE SUMMARY**

- This report outlines Council's assessment of an application seeking consent to modify an existing approval. Specifically the application seeks to amend a condition to permit use of poultry manure for pasture improvement and deletion of the curfew for night time pick-up of birds.
- A total of six (6) submissions were received in relation to this proposal.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extend 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 Condition 9.3 be amended but only to stipulate that no manure or spent litter is retained on the site.
  - That Condition 9.7 be deleted and the curfew be replaced with noise criteria requirements for the night time pick-up of birds.

**REPORT**

**BACKGROUND**

On 2 August 1995, Council granted Development Consent No. 272/95 for "Extension to Poultry Farm – 2 Additional Sheds". The approval resulted in a total of four (4) poultry sheds on the subject site.

On 30 June 2000, Council granted Development Consent No. D814-00 of "Two Additional Poultry Sheds". The approval resulted in a total of six (6) poultry sheds on the subject site. The consent also imposed a condition prohibiting the night time pick up of birds between the hours of 10.00pm and 7.00am.

On 23 December 2002, Council received Development Application No. D1682-02, for "Extensions and Relocation of Poultry Sheds" on the land at No. 325 Scroggies Road, Lakesland. Council granted development consent to the proposed development on 10 March 2003 subject to conditions including a night-time curfew for the pick-up of birds.

On 3 December 2015, Council received Application to Modify Consent No. 010.2002.00058844.002, to amend Condition 9.3 and delete Condition 9.7 of Development Consent No. D1682-02.

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325  
Scroggies Road, Lakesland**

Separately on 28 April 2015, Council received Development Application No. 010.2015.00000292.001, seeking consent for alterations and additions to the existing poultry farm. The application seeks to increase the number of sheds from 6 to 12. This Development Application is the subject of a separate report in this Business Paper.

**CONSULTATION**

The application was advertised for a period of 15 days commencing 1 June 2016. A total of six (6) submissions were received. The planning response to these submissions is discussed elsewhere in this report.

The application was also referred to Council's Environmental Health Officer for assessment and comment.

**1.1 DESCRIPTION OF SITE AND SURROUNDING AREA**

The site is an irregularly shaped block located at the western end of Scroggies Road, Lakesland. The site is bound by Kellsalls Road to the west, Scroggies Road to the north and Treelea Grove to the east and has an area of approximately 19.773ha.

The site contains a brick residence, six (6) poultry sheds, two (2) earth dams and various ancillary structures and outbuildings. The site is largely clear of vegetation with the exception of a small cluster of remnant vegetation adjacent to the southern boundary of the site.

The locality is characterised by a combination of large rural properties supporting various agricultural activities and smaller rural residential development. Immediately to the south of the subject site are rural residential lots with dwellings.

**1.2 DESCRIPTION OF DEVELOPMENT**

The applicant has lodged documentation in support of the Modification Application. The applicant seeks to amend Development Consent No. D1682-02 as outlined below:

**Condition 9.3 currently states:**

*"No manure or spent litter is to be stored external to the sheds and is to be removed promptly from the site by approved contractors once each 'batch' of birds is removed from each shed.*

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325  
Scroggies Road, Lakesland**

*The operator of the farm is seeking to have this condition modified to read:*

**Proposed condition 9.3 wording:**

*No manure or spent litter is to be stored externally to the sheds and is to be removed promptly from the site by approved contractors once each 'batch' of birds is removed from the shed. This condition does not apply to manure that is reused on site as part of another lawful agricultural activity."*

The applicant has provided the following justification for the amendment as follows:

*"The operator undertakes small-scale extensive agriculture on the land, being the grazing of livestock for commercial purposes. This activity is permissible without consent in the relevant zone, being RU1 Primary Production. In order to provide fodder for the cattle, the operator seeks consent to utilise approximately one-quarter of the total manure from the poultry operations as fertiliser. The remaining approximately three-quarters of the manure generated is removed from the site immediately upon shed clean-out.*

*The manure would be covered with a tarpaulin and stored onsite until it is spread across the paddocks to encourage fodder growth for the cattle. The manure would be spread by mechanical means.*

*The current consent would result in a scenario where the operator would be forced to remove the manure from the site (to comply with Condition 9.3 as it currently stands), then pay to have manure brought back to the site for spreading. This is an absurd planning outcome, as well as being inefficient and costly, and will only serve to increase heavy vehicle traffic on the surrounding road system."*

**Condition 9.7 states:**

*"Night-time pick up of birds shall not take place between the hours of 10pm and 7am."*

The proponent considers this condition to be overly restrictive, for reasons detailed below, and is requesting it be deleted from the consent.

The applicant has provided the following justification for the condition to be deleted is as follows:

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325  
Scroggies Road, Lakesland**

- “1. *The existing farm has been operating for many years and had been operating prior to the March 2003 grant of consent for alterations and extensions to the sheds. We are not aware of any substantiated complaint history for the farm, which has operated in harmony with the surrounding neighbourhood. Throughout this time, bird pickups have occurred at various times throughout the night. Consequently, there is no justification that the condition will achieve a planning purpose as required by the first arm of the test in Newbury District Council v Secretary of State for the Environment (1981).*
2. *The 2003 consent issued by Council relates to modest alterations and extension of the existing operation. Yet, the Condition 9.7 purports to prohibit night-time pick-ups for the entire operation. The proponent considers that this condition does not substantially relate to the development for which consent was sought and subsequently granted. It is, therefore, inconsistent with the second arm of the test in Newbury District Council v Secretary of State for the Environment (1981). It is further noted that the Council, in granting the consent, noted that the farm is existing and that this consent related to an upgrade rather than an expansion of the farm (Condition 1.1).”*
3. *Given the lack of complaints in relation to the existing operation, and considering the marginal increase in overall bird numbers (and consequently truck movements) as a result of this current consent, the proponent considers the prohibition on night-time pick-ups to be unreasonable and inconsistent with the third arm of the test in Newbury District Council v Secretary of State for the Environment (1981).*
4. *The farm has been designed in accordance with industry best practice and Council requirements to mitigate potential impacts relating to noise and light spill. The impacts of the night time bird pickups are minimal and well within what can be reasonably expected in a rural environment.*
5. *The rationale for night-time pickups relates predominantly to animal welfare. The National Land Transport of Livestock Standards establishes mandatory standards for welfare of livestock during transport, as well as guidelines for optimising bird welfare. Relevantly:*
  - *Standard A5.16 – A person in charge must take reasonable steps to minimise the impact of extreme weather conditions on the welfare of livestock during the transport process.*
  - *Guideline A5.30 – In hot weather, the journey should be managed to minimise the risk of heat stress. This may include loading and transporting susceptible livestock during the cooler parts of the day, not stopping, and providing shade and other cooling strategies (emphasis added).*

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325  
Scroggies Road, Lakesland**

- *Guideline B10.15 – The air temperature in a load of live poultry, other than day-old chicks, should be maintained between 10-30°C.*
  - *Guideline B10.2 – Stops during transport journeys should be avoided when transporting poultry.*
  - *Guideline B10.7 – Birds held in containers in holding for slaughter should be slaughtered as soon as possible. (The significance here is that the timetable and sequencing of the abattoir is of critical importance in determining when poultry should be collected. If collection times are not staggered throughout the night from all surrounding growers, the likelihood of truck-loads of poultry remaining unloaded for unacceptable periods of time at the abattoir increases significantly. This can lead to unacceptable stress on the birds, which is an animal cruelty issue).*
  - *Guideline B10.20 – Arrangements made for the pick-up, transport and slaughter should ensure that the time the birds remain in containers from pick-up to processing is minimised, particularly in hot weather.*
6. *In addition to the above, the RSPCA certification program for turkeys (standard 8.10) requires that lighting be dimmed during catching to ensure that birds are calm. Bird-calming techniques are easier to implement at night.*
7. *The heat generated by a load of live birds (especially turkeys) tends to result in overheating being more likely to be a problem in most areas than chilling, except in very cool climatic regions. Consequently, throughout most of Australia, poultry growers and suppliers strongly favour night-time pick-ups.*
8. *Nearly all bird pick-ups in Wollondilly are undertaken between the hours of 10:00pm and 7:00am. If Council does not delete Condition 9.7 from this consent, it will strongly disadvantage the proponent of this development, compared to other local poultry operations. In a commercial sense, pick-up times are out of the control of the poultry grower, rather the times are allocated by the supplier. If this proponent cannot comply with the allocation given to him by the supplier, his supplier contract will be at risk, which will undermine the viability of the entire operation. This is an unfair financial burden for this proponent, particularly when there appears to be little justification for the imposition of the condition in the first instance”.*

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325  
Scroggies Road, Lakesland**

**1.3 SECTION 79C ASSESSMENT**

Under legislation, Council is required to assess development proposals set out as follows:

**1.3.1 PROVISIONS OF RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS**

Section 96(2) of the *Environmental Planning and Assessment Act 1979* suggests that:

*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*

Comments: It is considered that the development is substantially the same.

- (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*

Comments: Not applicable. The nature of the proposed amendment to conditions of consent do not require consultation to obtain concurrence.

- (c) *It has notified the application in accordance with:*
  - (i) *the regulations, if the regulations so require, or*
  - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Comments: The application was formally advertised for a period of 15 days. Six (6) submissions were received. The content of the submissions will be discussed later in this report.

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

---

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325  
Scroggies Road, Lakesland**

- (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. Subsections (1) and (1A) do not apply to such a modification.*

Comments: An assessment is provided later in this report.

- (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 79C(1) as are of relevance to the development the subject of the application.*

Comments: All matters referred to in Section 79C(1) have been considered and are addressed in this report.

- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

Comments: Noted.

**Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River**

Comments: No works are proposed as part of this application and it is considered that there will be no impacts upon the receiving waters of the catchment.

**State Environmental Planning Policy No. 58 – Protecting Sydney's  
Drinking Water**

Comments: It is considered that the proposed amendments to conditions of consent did not require referral to Water NSW (previously the Sydney Catchment Authority).



**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325 Scroggies Road, Lakesland**

**Wollondilly Local Environmental Plan, 1991**

Characterisation: Poultry shed (Intensive Livestock Keeping Establishment)  
 Zone of land: 1(a) Agriculture Zone  
 Permissibility: Only with development consent  
 Zone objectives:

Objective	Comment
1(a)	
(a) to promote and maintain sustainable agricultural uses	The existing poultry farm is considered to be a sustainable agricultural use.
(b) to recognise the importance of the preservation of high-class agricultural land for agricultural purposes	The proposal is consistent with maintaining the existing use of the land for productive agriculture.
(c) to minimise the incidence of existing and potential rural land use conflict	Any conflicts with adjoining rural-residential land uses will be minimised, subject to the recommended conditions of consent.  This application relates to the current operations of the existing approved poultry farm.
(c1) to maintain existing significant stands of indigenous vegetation	The area has already been defined by the existing approval. Existing stands of vegetation will not be affected by this application.
(c2) to allow for the development of non-agricultural land uses which are compatible with the character of the zone	Not applicable.
(c3) to minimise the impact of noxious weeds on agricultural production	Not applicable.
(d) to protect the water quality of receiving streams and to reduce land degradation	The water quality of receiving streams is not impacted by this application.
(e) to minimise the impact of development on the existing agricultural landscape character.	No development is proposed as part of this application.

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

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325 Scroggies Road, Lakesland**

LEP Clauses

Clause	Comment
Tree preservation (cl.27)	Not applicable. The area has already been defined by the existing approval. Existing stands of vegetation will not be affected by this application.
Land subject to bushfire hazards (cl.36)	Not applicable. No buildings are to be erected as part of this application.

**1.3.2 PROVISIONS OF RELEVANT DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

No draft Environmental Planning Instruments are relevant to the development proposal.

**1.3.3 PROVISIONS OF RELEVANT DEVELOPMENT CONTROL PLANS**

**Agriculture Development Control Plan**

Approval of the application as recommended will not cause any non-compliance to the controls within this plan.

**Agricultural Lands Development Control Plan**

Approval of the application as recommended will not cause any non-compliance to the controls within this plan.

**Development Control Plan No. 36 – Development in Rural Areas**

Approval of the application as recommended will not cause any non-compliance to the controls within this plan.

**Development Control Plan No. 43 – Poultry**

Approval of the application as recommended will not cause any non-compliance to the controls within this plan.

**1.3.4 DRAFT AND/OR PLANNING AGREEMENTS ENTERED OR OFFERED TO ENTER INTO**

None applicable.

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325  
Scroggies Road, Lakesland**

**1.4 IMPACT OF THE DEVELOPMENT**

**Proposed amendment to Condition 9.3**

It should be noted that the applicant has not provided any technical assessment in support of the proposed stockpiling and re-use of poultry litter / manure for pasture improvement.

Council's Environmental Health Officer has suggested that the stockpiling of manure has the potential to be a constant source of odour to neighbouring properties. There are also potential pollutant emissions from airborne dust. In addition to adverse health and amenity impacts from odour and dust, it is a potential food source and harbourage for pests such as flies and rodents. The application of poultry manure to agricultural land can also impact negatively upon neighbouring properties. Other less offensive options are available for pasture improvement.

It is considered that stockpiling of manure / litter and use for pasture improvement is an avoidable nuisance to neighbouring properties that are already impacted by the poultry operations.

**Proposed amendment to Condition 9.7**

In addition to the justification referred to elsewhere in this report the applicant relies upon the Noise Impact Assessment prepared by Wilkinson Murray dated April 2015. The report has determined the ambient (background) in this location is approximately 32 dB(A). Using noise modelling techniques the report also predicts the likely impact from truck arrivals / departures and loading of trucks with tractor, which are considered to be the main noise sources during night time pick-up activities. These predictions show as concentric rings for Attachment 1 to this report.

The NSW Industrial Noise Policy suggests at Table 2.1 that the amenity criteria for night time activities in a rural area impacting upon a residence should not exceed 45 dB(A) as a maximum.

In accordance with the Industrial Noise Policy this is to be measured over 15 minutes and assessed at the most-affected point on or within the residential property boundary or, if the boundary is more than 30 metres from the residence, at the most-affected point within 30 metres of the residence.

The Noise Impact Assessment prepared by Wilkinson Murray suggests the noise levels will not exceed 40 dB(A) at the property boundary.

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325 Scroggies Road, Lakesland**

**1.5 SUITABILITY OF THE SITE**

Given the previous approval issued, the site is still considered suitable for the development.

**1.6 SUBMISSIONS**

The application was advertised for a period of 15 days commencing 1 June 2016. A total of six (6) submissions were received.

Below is an assessment of the submissions received relevant to this application:

Concern	Comment
<p>Night time pick up of birds – no legal or RSPCA requirement in relation to animal welfare and noise impacts:</p> <ul style="list-style-type: none"> <li>▪ Existing non-compliances and complaints raised with Council.</li> <li>▪ This area is increasing in both built and approved but yet to be built dwellings, which will be greatly impacted upon by the noise associated with night time pick-ups. There will be a negative effect on health and quality of life.</li> <li>▪ Constantly being woken by forklifts beeping, bright lights which shine directly into bedrooms, noisy workers and trucks.</li> <li>▪ If deletion of Condition 9.7 is to be considered, a full report is required to detail how noise disturbance would be prevented and controlled by the applicant.</li> </ul>	<p>Council considers the condition prohibiting bird pick-ups (Condition 9.7) can be removed in favour of a condition requiring compliance with the NSW Industrial Noise Policy.</p>
<p>24 hour operation is not in best interest of Lakesland residents – health &amp; safety wise.</p>	<p>The existing consent only prohibits the pick-up of birds between 10pm and 7am and not all operations of the poultry farm.</p>
<p>It is unreasonable to lift the curfew. The curfew was originally put in place by Council due to a Land &amp; Environment Court decision handed down in 2002, based on the</p>	<p>This Court decision was in relation to another application based upon the information provided with that proposal. Each application is assessed on its own merits.</p>

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325 Scroggies Road, Lakesland**

<p>Industrial Noise Policy preventing bird harvest between 10pm and 7am and due to the potential of noise disturbing residents.</p>	
<p>Why are these growers in breach of these conditions now and not fined?</p>	<p>Council investigates complaints raised and takes action where necessary and in accordance with the Compliance Policy.</p>
<p>Roads in Lakesland are not capable of handling large trucks. The roads can barely handle two cars passing each other. There are too many dangerous bends on these roads for trucks. Roads are also not maintained.</p>	<p>This is a matter that has been considered under the DA No. 010.2015.00000292.001 (see separate report).</p>
<p>Stockpiling of manure and odour impacts:</p> <ul style="list-style-type: none"> <li>▪ Health risks, additional flies, pungent smells hovering in the night air.</li> <li>▪ Existing non-compliances with the current condition on stockpiling and these have been raised with Council i.e. uncovered and placed on the property boundary.</li> <li>▪ ¼ of estimated 180sqm manure is 45sqm stockpiled 2-3 times per year which exceeds the amount required for any legal agricultural use stated in the submitted report. There has been a lack of accurate research and data analysis conducted in submitting such a request</li> <li>▪ No studies or reports have been conducted into the risk that stockpiling of poultry manure poses to the surrounding community.</li> <li>▪ Increase and concentration of large amounts of manure will lead to the transmission of manure based pathogens to residents who live in close proximity and produce health symptoms – eye, nose, respiratory and throat</li> </ul>	<ul style="list-style-type: none"> <li>▪ These concerns have been considered. It is proposed to amend Condition 9.3 to stipulate that no manure or spent litter is retained on the site.</li> </ul>

Planning & Economy

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325 Scroggies Road, Lakesland**

<p>irritations and potential for mental issues i.e. mood and memory.</p> <ul style="list-style-type: none"> <li>▪ Extensive occupational hygiene monitoring must be carried out to consider the potential health impact on this community.</li> <li>▪ Potential for contamination of drinking water – parasites may spread to water supplies.</li> <li>▪ Stockpiling will increase the level of conflict between community members and the poultry farm which goes against the objective of the DCP – Minimise the potential for land use conflict.</li> <li>▪ An environmental impact statement should be prepared.</li> </ul>	
<p>A wall should be constructed on the boundary around the farm to redirect odours and dust.</p>	<ul style="list-style-type: none"> <li>▪ There is an existing landscape buffer, which is considered to address odour and dust concerns, in accordance with Best Practice.</li> </ul>

Planning & Economy

In addition to the above, Council received a detailed submission on 1 July 2016, which is included in the planning submissions booklet. Council’s response to this submission dated 9 August 2016 and 22 September 2016 are included as Attachment 2 in the separate Attachments Booklet.

**1.7 THE PUBLIC INTEREST**

It is considered that this modification does not have any detrimental impact to the public interest, nor the interest of any government agency representative of the public interest.

**CONCLUSION**

Regardless of the volume and siting of the manure or spent litter, it is considered that the impact of retaining any manure or spent litter on the site is too great. Accordingly it is recommended that Condition 9.3 be amended but only to stipulate that no manure or spent litter is retained on the site.

In terms of the proposed deletion of Condition 9.7 it is recommended that this condition should be deleted and replaced with noise criteria requirements.

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325  
Scroggies Road, Lakesland**

**FINANCIAL IMPLICATIONS**

This matter has no financial impact on Council's adopted budget or forward estimates.

**ATTACHMENTS INCLUDED IN SEPARATE BOOKLET**

1. Noise Modelling results for truck arrivals / departures and loading of trucks with tractor.
2. Council response to detailed submission dated 9 August 2016 and 22 September 2016.

**RECOMMENDATION**

That Application to Modify Development Consent No. 010.2002.00058844.002 to amend Condition 9.3 and delete Condition 9.7 of Development Consent No. D1682-02, at 325 Scroggies Road, Lakesland be modified in the following manner:

1. Condition 9.3 is modified to read:

*'Manure or spent litter must not be retained or stockpiled on the property at any time.'*

2. Condition 9.7 is modified (with an Advisory Note) to read:

*'The night time pick-up of birds is permitted by this consent under the following terms:*

- *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.*

**PE3 – Application to Modify Consent No. 010.2002.00058844.002 – 325  
Scroggies Road, Lakesland**

- *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.*

**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 considered 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.*

3. All other conditions of consent remain valid and applicable.