Australian Capital Territory

Planning and Development (Approval of Application – 201732556 Mugga Lane Haul Road, Jerrabomberra) Notice 2018

Notifiable instrument NI2018–12

made under the

Planning and Development Act 2007, s 170 (Notice of approval of application)

1 Name of instrument

This instrument is the *Planning and Development (Approval of Application – 201732556 Mugga Lane Haul Road, Jerrabomberra) Notice 2018.*

2 Impact track development approval

On 29 November 2017, pursuant to section 162 of the *Planning and Development Act 2007 (the* **Act**), the delegate of the planning and land authority approved, subject to conditions, in the impact track, development application 201732556, for the construction of a new haul road and associated works.

3 The approval of development application 201732556 is in the schedule.

Ben Ponton Chief Planning Executive 3 January 2018



Notice of decision

Under Part 7 of the *Planning and Development Act 2007*

DA NO: 201732556		DATE LODGED: 18 October 2017		
DATE OF DECISION: 2	29 November 2017			
BLOCK: 2247	SECTION: 0	SUBURB: JERRABOMBERRA		
STREET NO AND NAME: 499 Mugga Lane				
APPLICANT: Peter Russell				
LESSEE:				
Australian Capital Territory				

THE DECISION

This application was lodged in the impact track. Pursuant to section 113(2) of the *Planning and Development Act 2007*, the application must be assessed according to the provisions relevant to impact track applications.

I, *Dominic Riches*, delegate of the planning and land authority, pursuant to section 162 of the Act, hereby **approve subject to conditions** the proposal for:

the construction of a new haul road and associated works

in accordance with the plans, drawings and other documents and items submitted with the application and endorsed as forming part of this approval.

This decision is subject to the conditions of approval at **PART 1** being satisfied. **Please note that plans will not be dispatched until some conditions are satisfied.**

PART 2 sets out the Reasons for the Decision.

PART 3 is Public Notification and Entity Advice.

PART 4 contains administrative information relating to the determination.

DELEGATE

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Dominic Riches Delegate of the planning and land authority Environment and Planning Directorate 29/11/2017

CONTACT OFFICER Mr Dominic Riches Phone: 6205 1834 Email: <u>dominic.riches@act.gov.au</u>

PART 1 CONDITIONS OF APPROVAL

This application is approved subject to the following conditions being satisfied. Some conditions of approval will require attention before the approved drawings will be released by the Authority, others before work commences or before the completion of building work.

A. PRIOR TO CONSTRUCTION AND/OR DEMOLITION

A1. ENVIRONMENTAL MANAGEMENT PLAN

An environmental Management plan (EMP) must be submitted to and endorsed by the planning and land authority prior to the commencement of works. The EMP must incorporate relevant matters from the completed EIS, *Mugga Landfill Expansion (Stage 5)*.

A2. TRAFFIC MANAGEMENT PLAN

A site traffic management plan must be submitted to and endorsed by Transport Canberra and City Services (TCCS) prior to the commencement of works. The site traffic management plan is to outline the traffic arrangements and controls to be implemented within the landfill site, such as directions of travel and speed restrictions. In addition to the on-site traffic management arrangements this plan should include a Temporary Traffic Management Plan (TTM) if it is intended to use the alternative southern access point for construction activities. The TTM Plan should meet TCCS's documentation requirements and is required to be approved and implemented before the alternative southern access is used.

A3. AMEND ENVIRONMENTAL AUTHORISATION

The existing Environmental Authorisation held between the landfill operator, Remondis and the Environment Protection Authority (EPA) is to be updated as necessary for the expanded landfill.

A4. SITE MANAGEMENT PLAN

A site management plan must be submitted to and endorsed by the Conservator prior to the commencement of works involving the removal of trees. The plan should include information on the staff required to undertake the activities, such as ecologists and wildlife handlers. This plan is to outline the method to be followed for the:

- Seasonal timing of tree clearance
- checking hollows for the presence of fauna
- felling trees
- lowering trees to the ground
- waiting appropriate times for fauna to relocate
- transport and placement of felled trees to the offset site

A5. <u>HERITAGE</u>

MLI and ML2 must be salvaged by a qualified archaeologist and Representative Aboriginal Organisations prior to works commencing, and within three months of the Development Application being approved.

The proposed salvage shall occur in accordance with the Section 76 approval issued by the ACT Heritage Council on 5 January 2011.

The cultural material salvaged shall be lodged with ACT Heritage for storage.

B. DURING CONSTRUCTION AND/OR DEMOLITION

The following conditions are required to be implemented and maintained for the duration of any work on the site.

B1. ENVIRONMENT PROTECTION AUTHORITY (EPA)

All works must be carried out in accordance with *Environment Protection Guidelines for Construction and Land Development in the ACT, March 2011.*

No soil is to be disposed on or off-site or reused on-site outside of the specific area of works without the approval of the EPA.

B2. <u>HERITAGE</u>

The Unanticipated Discovery Plan outlined in the Biosis (2010) report must be adhered to, and must be identified to all project personnel as part of the induction process.

B3. MANAGEMENT PLANS

During construction, all works must be in accordance with the endorsed environmental, traffic and site management plans.

C. ADVISORY NOTES

This application is approved with the following advisory notes. It is recommended that careful consideration be given to advisory notes prior to commencing work.

C1. ENVIRONMENT PROTECTION AUTHORITY (EPA)

All rain water that enters the site and pools in excavations during a rain storm event would be considered as a sediment control pond, and must meet the following condition:

• No discharge from pond unless sediment level is less than 60mg/litre. If sediment level is greater, then prior to discharge, the dam must be dosed with either Alum or Gypsum and allowed to settle until the sediment is less than 60 mg/litre.

C2. ACTEWAGL (ELECTRICITY)

All issues relevant raised in the ActewAGL conditional Statement of Compliance for electricity must be addressed accordingly (refer PART 3 – ENTITY ADVICE).

Refer to Appendix 1 for information about approvals that may be required for construction and/or demolition.

PART 2 REASONS FOR THE DECISION

The application satisfactorily meets the requirements for approval. The application was approved because, based on the documentation and in the form modified by the imposed conditions, it was considered to meet the relevant codes, being:

- Jerrabomberra Precinct Map and Code
- Non-Urban Zone Development Code
- Access and Mobility General Code
- Crime Prevention through Environmental Design General Code

The application was assessed in the Impact Track because the proposal is associated with the expansion of the Mugga landfill (Stage 5). The Environmental Impact Statement (EIS) identified both Territory and Commonwealth matters that may be impacted on the area identified in the scope. All relevant mitigation measures from the EIS have been imposed as conditions of approval.

Other key issues identified in the assessment are matters raised by entities. Conditions have been imposed to address these issues and ensure that the proposal is consistent with the Territory Plan and the *Planning and Development Act 2007*.

EVIDENCE

Application No. 201732556 File No. 1-2017/24269 The Territory Plan zone – NUZ1 Broadacre Zone The Development Codes – Non-Urban Zone Development Code The Precinct Codes – Jerrabomberra Precinct Map and Code EIS No. Titled: Mugga Landfill Expansion Stage 5 accepted by the Minister on 12 April 2014 Current Crown Lease – Volume 2207 Folio 3 Representations – Nil written representations were received Entity advice – Health, EPA, ESA, Conservator, TCCS, Heritage, ActewAGL & Icon Water Other – Site inspection (26/10/2017)

Authorised by the ACT Parliamentary Counsel-also accessible at www.legislation.act.gov.au

PART 3 PUBLIC NOTIFICATION AND ENTITY ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the Act, the application was publicly notified from 30 October 2017 to 17 November 2017. Nil written representations were received during public notification.

ENTITY ADVICE

Pursuant to Division 7.3.3 of the Act, the application was referred to entities and advice was received. The referral entities' comments are as follows. A response to the advice is provided as appropriate.

<u>ACT HEALTH</u>

On 13 November 2017 advice was received from the ACT Health in relation to the proposal. The advice states that the application has been supported.

The advice has been noted as part of the assessment

ENVIRONMENT PROTECTION AUTHORITY (EPA)

On 28 November 2017 advice was received from the EPA in relation to the proposal. The advice states that the application has been supported with the following conditions and advice:

Conditions:

All works must be carried out in accordance with Environment Protection Guidelines for Construction and Land Development in the ACT, March 2011, available by calling 132281.

No soil is to be disposed on or off-site or reused on-site outside of the specific area of works without the approval of the EPA.

Advice:

All rain water that enters the site and pools in excavations during a rain storm event would be considered as a sediment control pond, and must meet the following condition:

• No discharge from pond unless sediment level is less than 60mg/litre. If sediment level is greater, then prior to discharge, the dam must be dosed with either Alum or Gypsum and allowed to settle until the sediment is less than 60 mg/litre.

Matters raised have been incorporated as conditions of approval and advice.

EMERGENCY SERVICES AGENCY (ESA)

On 15 November 2017 advice was received from the ESA in relation to the proposal. The advice states that the application has been supported.

The advice has been noted as part of the assessment

CONSERVATOR OF FLORA AND FAUNA

On 29 November 2017 advice was received from the Conservator of Flora and Fauna in relation to the proposal expressing no comment.

The advice has been noted as part of the assessment

TRANSPORT CANBERRA AND CITY SERVICES DIRECTORATE

On 9 November 2017 advice was received from Transport Canberra and City Services Directorate in relation to the proposal. The advice states that the application has been supported.

The advice has been noted as part of the assessment.

<u>ACT HERITAGE</u>

On 15 November 2017 advice was received from the ACT Heritage in relation to the proposal. The advice states that the development will directly impact the MLI and ML2 Aboriginal places recorded in 2010 and therefore require the following conditions:

MLI and ML2 must be salvaged by a qualified archaeologist and Representative Aboriginal Organisations prior to works commencing, and within three months of the Development Application being approved;

The proposed salvage shall occur in accordance with the Section 76 approval issued by the Council on 5 January 2011;

The cultural material salvaged shall be lodged with ACT Heritage for storage; and

The Unanticipated Discovery Plan outlined in the Biosis (2010) report must be adhered to, and must be identified to all project personnel as part of the induction process.

Matters raised have been incorporated as conditions of approval.

ACTEWAGL (ELECTRICITY)

On 31 October 2017 advice was received from ActewAGL in relation to the proposal. The advice states that the application has been supported with the following conditions:

Development is to comply with minimum 1.5m machinery access clear of obstacles and vegetation to assets within the block.

Development is to comply with minimum clearances to overhead conductors and poles. Ref ActewAGL Drawing 3811-004.

Development is to comply with minimum separation requirements to underground assets. Ref ActewAGL Drawing 3832-018.

Installation of electrical conduits (on or off block) will be the responsibility of the proponent.

Proponent is required to submit an "Application for Electricity Network Connection or Alteration form" to enworks@actewagl.com.au (available on ActewAGL website) prior to commencement of any development activity to negotiate the connection of new and/or relocation of existing electricity assets.

Matters raised have been incorporated as advice.

ACTEWAGL (GAS)

On 6 November 2017 advice was received from ActewAGL in relation to the proposal. The advice states that there are no Gas Networks assets within the vicinity of the development.

The advice has been noted as part of the assessment.

ICON WATER

On 27 October 2017 advice was received from Icon Water in relation to the proposal. The advice states that the application has been supported.

The advice has been noted as part of the assessment.

PART 4 ADMINISTRATIVE INFORMATION

DATE THAT THIS APPROVAL TAKES EFFECT

This approval is effective from the day after the date of this notice. The effective date for development applications approved subject conditions could be adjusted if the approval is reconsidered by the planning and land authority or if an application is made to the ACT Civil and Administrative Tribunal.

Pursuant to section 184 of the Act, this approval will expire if:

- the development or any stage of the development is not started within two years after the day the approval takes effect;
- the development is not finished two years after the day the development begins; or
- the development approval relates to land comprised in a lease that requires the development to be completed on a stated date the date stated in the lease for completion of the development, or the approval is revoked under section 189 of the Act.

Under section 184 of the Act, the applicant may apply to the planning and land authority to extend the prescribed period to finish the development, but such an application must be made within the original period specified for completion.

A development approval, to which section 184 of the Act applies, continues unless the approval ends under sections 184, 185, 186 or 187 of the Act.

INSPECTION OF THE APPLICATION AND DECISION

A copy of the application and the decision can be inspected between 8:30am and 4:30pm weekdays at the Environment and Planning Directorate Dickson Customer Service Centre at 16 Challis Street, Dickson, ACT.

RECONSIDERATION OF THE DECISION

If the applicant is not satisfied with the decision to approve the application subject to conditions, they are entitled to apply to the planning and land authority for reconsideration within 20 working days of being told of this decision or within any longer period allowed by the planning and land authority.

To submit an application for reconsideration, documents must be provided electrically by email to <u>epdcustomerservices@act.gov.au</u> or provided at the customer service centre on a CD/DVD. The delegate of the Authority reconsidering the decision must be different from, and senior to, the original decision maker. An application for reconsideration does not prevent an application for a review of the same decision being made to the ACT Civil and Administrative Tribunal. Application forms and further information about reconsideration are available from the planning and land authority's website and Customer Service Centres.

REVIEW BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (ACAT)

Decisions that are reviewable by the ACAT are identified in Schedule 1 of the *Planning and Development Act 2007*, except for those precluded under Schedule 3 of the *Planning and Development Regulation 2008* – Matters exempt from third-party ACAT review.

APPENDIX 1

CONTACT DETAILS OF RELEVANT AGENCIES

Health Directorate	Website: www.health.act.gov.au
- health protection	Telephone: (02) 6205 1700
Environment and Planning Directorate	
 Planning and land authority list of certifiers for building approval demolition information asbestos information 	Website: <u>www.actpla.act.gov.au</u> Telephone: (02) 6207 1923
 Environment Protection Authority environment protection water resources asbestos information 	Website: <u>www.environment.act.gov.au</u> Telephone: (02) 6207 6251
Conservation, Planning and Research - threatened species/wildlife management	Website: <u>www.environment.act.gov.au</u> Telephone: (02) 6207 1911
 Territory and Municipal Services Directorate tree damaging activity approval use of verges or other unleased Territory land works on unleased Territory land - design acceptance damage to public assets 	Website: <u>www.tams.act.gov.au</u> Telephone: 132 281 Telephone for asset acceptance: (02) 6207 7480
Utilities - Telstra (networks) - TransACT (networks) - IconWater - Electricity reticulation	Telephone: (02) 8576 9799 Telephone: (02) 6229 8000 Telephone: (02) 6248 3111 Telephone: (02) 6293 5738

ADVICE TO APPLICANT

SUBMISSION OF REVISED DRAWINGS AND DOCUMENTATION

If a condition of approval requires the applicant to lodge revised drawings and/or documentation with the ACT Planning and Land Authority for approval under section 165 of the *Planning and Development Act 2007* the submission shall be made by:

• Completing an application for S165 Satisfying Conditions of Approval and submitting the documentation online using edevelopment. More information on edevelopment can be found at http://www.actpla.act.gov.au/tools resources/e-services/edevelopment

For further information regarding the lodgement of this information please contact Customer Services by Phone: (02) 6207 1923, Email: **epdcustomerservices@act.gov.au** or on the planning and land authority website at <u>www.planning.act.gov.au</u>.

FURTHER APPROVALS FOR CONSTRUCTION

The Notice of Decision grants development approval, but does not cover building approval or approvals which may be required during construction, which commonly include the following.

BUILDING APPROVAL

Most building work requires building approval to ensure it complies with building laws such as the Building Code of Australia. If this applies to this proposal, the lessee should engage a private building certifier to assess and approve the building plans before construction begins. A list of licensed certifiers and information about building approval is available from the ACT Planning and Land Authority's website and Customer Service Centres.

PERMITTED VARIATIONS TO APPROVED DEVELOPMENT

Under section 35 of the *Planning and Development Regulation 2008* the development as built may vary from the approved development in accordance with section 35 and the permitted construction tolerances and other permitted variations identified in Schedule 1A of that regulation.

- *Note 1* The development may still need building approval, or further building approval, under the *Building Act 2004*
- *Note 2* The development must also comply with the lease for the land on which it is carried out.

"TREE DAMAGING ACTIVITY" APPROVAL

A Tree Management Plan under the *Tree Protection Act 2005* is required for approval where it is proposed to undertake groundwork within the tree protection zone of a protected tree or likely to cause damage to, or remove, any trees defined as protected trees by that Act. More information is available from the Territory and Municipal Services Directorate.

USE OF VERGES OR OTHER UNLEASED TERRITORY LAND

In accordance with the *Public Unleased Land Act of 2013,* road verges and other unleased Territory land must not be used for the carrying out of works, including the storage of materials or waste, without prior approval of the Territory. Approval can be obtained from the Territory and Municipal Services Directorate.

WORKS ON UNLEASED TERRITORY LAND - DESIGN AND OPERATIONAL ACCEPTANCE

In accordance with the *Public Unleased Land Act of 2013*, no work can be undertaken on unleased Territory land without the approval of the Territory. Such approval must be obtained from the Manager Asset Acceptance, Asset Services Group, TAMSD by way of:

- 1. a certificate of design acceptance prior to the commencement of any work and
- 2. a certificate of operational acceptance on completion of all works to be handed over to TAMSD

Works on unleased Territory land may include the construction or upgrading of driveway verge crossings, public footpaths, roads, street lighting, stormwater works, waste collection amenities, street signs and line marking, road furniture and landscaping.

A certificate of compliance under s296 of the *Planning and Development Act 2007* may not be issued unless a certificate of design acceptance **AND** a certificate of operational acceptance has both been obtained from TAMSD.

CONSTRUCTION REQUIREMENTS

The following information are some key requirements that apply to building work in the Territory. Other requirements may apply to this development.

DEMOLITION AND ASBESTOS MANAGEMENT

Demolition and asbestos management must be undertaken in accordance with the *Building Act* 2004 (including the Building Code of Australia) and the *Dangerous Substances Act* 2004. Information about demolition and asbestos management is available from the planning and land authority's web site and Customer Service Centres.

ENVIRONMENT PROTECTION

All building work must be undertaken in accordance with the *Environment Protection Act 1997*, particularly but not exclusively in relation to noise and pollution control. More information is available from the Environment Protection Authority.

REPAIR OF DAMAGE TO PUBLIC ASSETS

The applicant/lessee is held responsible for all damage to ACT Government assets (including footpaths) caused by the development and they must properly repair any damage to those assets. Before work commences, they should notify the Territory and Municipal Services Directorate of any existing damage to public facilities.

UTILITY ASSETS RETENTION

The lessee should obtain a plant location advice from ActewAGL to avoid conflict with existing plant or electrical easements. The lessee will be responsible for the costs associated with the relocation of assets, if necessary. The lessee is to ensure that the water service and water meter are retained in position and in good condition. Icon Water's water meters are accountable items and must not be removed from the site or otherwise disposed of.

<u>DRAINAGE</u>

The Building Code of Australia contains provisions affecting surface drainage and the height of finished floor levels. These may apply to this proposal.

REVIEW OF THE DECISION

The following notes are provided in accordance with regulation 7 of the *ACT Civil and Administrative Tribunal Regulation 2009.* Refer to the Review by the ACT Civil and Administrative Tribunal (ACAT) section of the Notice of Decision for information about its relevance to this development application.

CONTACT DETAILS

The review authority is the ACT Civil and Administrative Tribunal (ACAT).

Location	Contact details
	Website: www.courts.act.gov.au
ACT Civil and Administrative Tribunal	Email: tribunal@act.gov.au
Level 4, 1 Moore Street	Telephone: (02) 6207 1740
CANBERRA CITY ACT 2601	Facsimile: (02) 6205 4855
	Post: GPO Box 370, CANBERRA, ACT, 2601
	Document exchange: DX 5691

POWERS OF THE ACAT

The ACAT is an independent body. It can review on their merits a large number of decisions made by ACT Government ministers, officials and statutory authorities. The ACAT can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with ACAT recommendations.

Authorised by the ACT Parliamentary Counsel-also accessible at www.legislation.act.gov.au

APPLICATIONS TO THE ACAT

To apply for a review, obtain an application form from the ACAT. You can also download the form from the ACT Legislation Register <u>http://www.legislation.act.gov.au/af/2009-278/current/pdf/2009-278.pdf</u>.

If you are applying on behalf of an organisation or association of persons, whether incorporated or not, the Tribunal in deciding whether to support this application will consider the effect of the decision being reviewed on the interests of the organisation or association in terms of its objects or purposes. A copy of the relevant documents will be required to be lodged with the Tribunal.

TIME LIMITS FOR APPLICATIONS

The time limit to make a request for a review is 28 days from the date of this Notice of decision. The time limit can be extended in some circumstances (refer to sections 10 (2), 10(3), 25(1)(e) and 25(2) of the ACT Civil & Administrative Tribunal Act 2008; section 7 of the ACT Civil and Administrative Tribunal Procedure Rules 2009 (No 2); and section 409 of the Planning and Development Act 2007).

<u>FEES</u>

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee (the Tribunal Registry will advise of the current fee), unless you are receiving legal or financial assistance from the ACT Attorney-General. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*). Decisions to grant assistance are made on the grounds of hardship and that it is reasonable, in all the circumstances, for the assistance to be granted. Write to: The Chief Executive, Justice and Community Safety Directorate, GPO Box 158, CANBERRA ACT 2601. Ask the ACAT for more details.

TIME LIMITS FOR REVIEWS OF DECISIONS

The ACAT is required to decide appeals in land and planning and tree protection cases within 120 days after the lodging of the appeal, unless that period is extended by the ACAT upon it being satisfied that it is in the interests of justice to do so.

FORMS OF LEGAL, FINANCIAL AND OTHER ADVICE AND ASSISTANCE

The following organisations can provide advice and assistance if you are eligible:

- ACT Attorney-General, write to The Chief Executive, Justice and Community Safety Directorate, GPO Box 158, CANBERRA, ACT, 2601;
- the ACT Legal Aid Office, telephone 1300 654314;
- Legal Advice Bureau, telephone (02) 6247 5700;
- ACT Council of the Ageing, telephone (02) 6282 3777;
- Welfare Rights and Legal Centre, telephone (02) 6247 2177; and
- Environmental Defender's Office (ACT), telephone (02) 6247 9420.

AWARDING OF COSTS

You will have to pay any costs involved in preparing or presenting your case. The ACAT also has the power to award costs against a party if the party contravenes a direction of the ACAT and the ACAT considers it in the interests of justice to make such an order. This power is in addition to the power of the ACAT to strike out a party and to dismiss an application for failure to comply with the ACAT's directions.

ACCESS TO DOCUMENTS ABOUT THE DECISION

You may apply for access to any documents you consider relevant to this decision under the ACT *Freedom of Information Act 1989.* Information about Freedom of information requests is available on the EPD web site or by contacting us by phone on (02) 6207 1923.

PROCEDURES OF THE ACAT

The procedures of the ACAT are outlined on the ACAT's website, including in the Guide to the Land and Planning Division and the Guide to the Hearing. Contact the ACAT for alternative ways to access information about the ACAT's procedures.

TRANSLATION AND INTERPRETER SERVICES

The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week. Telephone 131 450.

ENGLISH	If you need interpreting help, telephone:		
ARABIC	إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :		
CHINESE	如果你需要传译员的帮助,请打电话:		
CROATIAN	Ako trebate pomoć tumača telefonirajte:		
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήσετε στο		
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:		
MALTESE	Jekk għandek bżonn I-għajnuna t'interpretu, ċempel:		
PERSIAN	اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:		
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:		
SERBIAN	Ако вам је потребна помоћ преводиоца телефонирајте:		
SPANISH	Si necesita la asistencia de un intérprete, llame al:		
TURKISH	Tercümana ihtiyacınız varsa lütfen telefon ediniz:		
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:		
TRANSLATING AND INTERPRETING SERVICE			
131 450			
	Canberra and District - 24 hours a day, seven days a week		