Councillors,

In accordance with section 367 of the Local Government Act, 1993 notice is hereby given that an EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE MEETING will be held on:

**DATE:** 12 December 2017

**TIME:** 5.30pm

**VENUE:** Council Chambers
2nd Floor
City Hall
290 King Street
Newcastle NSW 2300

Jeremy Bath
Interim Chief Executive Officer

City Administration Centre
282 King Street
NEWCASTLE NSW 2300

5 December 2017

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*NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER*
DEVELOPMENT APPLICATIONS

ITEM-19  
DAC 12/12/17 - DA2014/1214.01 - 10/569 AND 11/569 HUNTER STREET NEWCASTLE

APPLICANT: CHRIS MILLS C/- LONG LEGAL PTY LTD  
OWNER: S G AVNELL & M W SANDWITH  
REPORT BY: PLANNING AND REGULATORY  
CONTACT: DIRECTOR OF PLANNING AND REGULATORY / MANAGER OF DEVELOPMENT AND BUILDING  

PART I

PURPOSE

A Section 96(1A) modification application to extend the approved operating hours at the Star Hotel has been lodged. Trading hours are proposed until 1:00am Monday to Saturday on a permanent basis. Sunday trading will continue as approved, closing at 10:00pm. The Star Hotel is located at 10/569 and 11/569 Hunter Street Newcastle.

The application has been called in by Councillors Clausen and Winney-Baartz to be determined by the Development Applications Committee.

The proposal was considered at a meeting of the Public Voice Committee on 5 December 2017. However, due to the condensed business paper preparation cycle at this time of the year, additional matters raised at Public Voice were not able to be included in this report. If new matters are raised, they will be the subject of a separately distributed briefing note prior to the DAC meeting.

A copy of the submitted documentation is included in Attachment A.
The application has been notified for a 14 day period in accordance with Council's Public Notification Policy. A total of four submissions were received. One submission supported the application, while the other three submissions objected to the proposal to extend trading hours.

The objector's concerns include:

1. Alleged non-compliance with previously imposed conditions of consent.
2. Alleged breach of the limitations during period of the trial.
3. Safety and security.
4. Noise and anti-social behaviour.
5. Failure to implement the measures agreed to in the Management Plan.

Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Environmental Planning Assessment at Section 4.0.

Due to the nature of the proposal, the application was referred to NSW Police for comment and a number of concerns were raised relating to late night trading of licensed premises (Refer to Attachment D).

**Issues**

Key issues of relevance in the assessment of this application include:

1. Non-compliance with conditions of consent.
2. Residential amenity.
3. Acoustic privacy.
5. Public interest and precedent.

**Conclusion**

The proposal to extend trading hours at the Star Hotel has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the *Environmental Planning and Assessment Act 1979* and the proposal is considered to be unacceptable for the above issues.

The application is recommended for refusal on the above identified grounds and reasons for refusal are included in Attachment B.
RECOMMENDATION

A. THAT DA2014/1214.01 to extend trading hours for the Star Hotel located at 10/569 and 11/569 Hunter Street Newcastle be refused for the following reasons:

1. The application does not include sufficient information to demonstrate that the proposed extended trading hours will involve minimal environmental impact. [Section 96(1A) Environmental Planning and Assessment Act 1979]

2. The application does not include sufficient information to demonstrate that the proposed extended trading hours will not pose unreasonable adverse impacts on the amenity of occupants of the residential apartments located on the land and will not contribute to increased adverse social impacts within the local area. [Section 79C(1)(a)(b)(c)(d)&(e) Environmental Planning and Assessment Act 1979].

3. The proposed extended trading hours is not consistent with the provisions of Newcastle Local Environmental Plan 2012, primarily with respect to Clause 2.3 Zone objectives and Land Use Table - Zone B4 Mixed Use objectives ‘to provide a mixture of compatible land uses’ and Clause 6.5 Public safety - licensed premises. The extended trading hours will increase late night activity and concentrations of pedestrians within the public domain, increased competition for public transport and increased likelihood of noise at unreasonable times and anti-social behaviour. [Section 79C(1)(a) Environmental Planning and Assessment Act 1979]

4. The proposed extended trading hours is not consistent with relevant provisions of Newcastle Development Control Plan 2012. [Section 79C(1)(a) Environmental Planning and Assessment Act 1979]

5. The proposed extended trading hours will have an unreasonable social impact in the locality, through increased concentrations of people, noise and potential for increased anti-social behaviour. [Section 79C(1)(b) Environmental Planning and Assessment Act 1979]

6. The site of the premises is not suitable for extended trading hours due to the likelihood of adverse residential amenity impacts on the residential apartments that occupy the land. Reliance on strict control by management in operation of the premises, especially during hours of closure and exit of patrons will not adequately mitigate likely noise, social and anti-social behaviour impacts generated through extended trading hours. [Section 79C(1)(c) Environmental Planning and Assessment Act 1979]

7. Submissions received in response to public notification have raised issues of a nature and extent that establish that the proposed extended trading hours are likely to have unreasonable impacts on residential amenity, due
to noise, safety and security and social impacts. [Section 79C(1)(d) Environmental Planning and Assessment Act 1979]

8. The proposed extended trading hours is contrary to the public interest with respect to orderly, predictable and compatible mix of land use activities within the local area and cumulative adverse social impact and public safety through competitive trading. [Section 79C(1)(e) Environmental Planning and Assessment Act 1979]

9. Approval of the proposal will set an undesirable precedent.

B. THAT those persons who made submissions be advised of the determination of the application.

Political Donation / Gift Declaration

Under Section 147 of the Environmental Planning and Assessment Act 1979, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Council employee within a two year period before the date of this application.

The applicant has answered NO to the following question on the application form: Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?

PART II

1.0 THE SUBJECT SITE

The subject site contains a mixed-use development consisting of the Star Hotel at ground floor level and 31 residential apartments above. The site has frontage to both Hunter and King Streets and is bordered on its eastern side by Devonshire Lane. The Star Hotel is located with frontage to King Street (between Union and Steel Streets), with approved outdoor dining available at certain times in Devonshire Lane.

Devonshire Lane is a public laneway serving as a vehicular and pedestrian link between King and Hunter Streets, and also for vehicular access into the mixed use development on the subject site. Devonshire Lane also provides a frontage to other properties in this location.

There are several other small bars within this locality and several larger licensed premises, namely Wests City (opposite, in King Street) and the King Street Hotel (corner of King and Steel Streets).
2.0 THE PROPOSAL

The applicant seeks to extend the approved hours of operation of the Star Hotel by modifying condition 13 of the consent issued in respect of DA2014/1214.

Development Consent was originally granted on 22 December 2014 for Alterations, Fit-Out and Change of Use to a Food and Drink Premises (Restaurant and Pub) subject to the imposition of 36 conditions of consent. Condition 13 is as follows:

13 The hours of operation or trading of the premises are to be not more than from:

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unless a separate application to vary the hours of operation or trading has been submitted to and approved by Council.

A Section 96(1A) modification application was previously lodged seeking extended trading until 1:00am, and was refused under delegated authority.

The applicant subsequently appealed the refusal and on 17 August 2015, the NSW Land and Environment Court issued consent Orders that included a modification to condition 13 that allowed for the proposed extended trading hours to occur on a time-limited trial basis, as follows:

13 The hours of operation or trading of the Premises is for a twelve (12) month trial period which will cease on 14 August 2016. The hours of operation or trading are to be not more than the following as outlined below:

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After the completion of the twelve (12) month trial period, the hours of operation or trading of the premises will revert back to closing at 12:00 midnight on Monday to Saturday.
The use of the outdoor dining area associated with the Premises, must cease at 10:30pm. All patrons within the outdoor dining area must be relocated within the building by 10:30pm (excluding Sundays, when the Premises closes at 10:00pm).

The doors that open onto Devonshire Lane must be closed by 10:30pm, with patrons directed back into the building premises and/or directed out onto King Street when leaving the premises and upon closing on Sundays at 10:00pm. The current Section 96(1A) application proposes to modify the approved hours to enable trading to extend to 1:00am from Monday to Saturday on a permanent basis. Sunday trading hours are proposed to remain unchanged with the premises closing at 10:00pm.

A copy of the submitted information is included at Attachment A. The various steps in the processing of the application to date are outlined in the Processing Chronology included at Attachment C.

3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days to adjoining owners in accordance with Council's Public Notification Policy. A total of four submissions were received. One submission supported the application, and three objected to the proposal to extend trading hours.

The concerns raised by the objectors in respect of the proposed development are summarised as follows:

i. Alleged non-compliance with previously imposed conditions of consent.
ii. Breach of the trial period limitations.
iii. Safety and security.
iv. Noise and anti-social behaviour; and
v. Failure to implement the measures agreed to in the Management Plan.

Due to the nature of the proposal, the application was referred to NSW Police for consideration and they have also highlighted a number of concerns relating to late night trading of licensed premises.

The objector's concerns are addressed under the relevant matters for consideration in the following section of this report.

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 79C(1) of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

4.1 Statutory Considerations [Section 79C(1)(a)(i) and (ii)]
4.1.1 State Environmental Planning Policies [Section 79C(1)(a)(i)]

There are no relevant State Environmental Planning Policies to consider with this modification application.

4.1.2 Newcastle Local Environmental Plan 2012 (NLEP 2012) [Section 79C(1)(a)(i)]

2.3 Zone objectives and land use table

The subject property is located within the B4 Mixed Use Zone under the provisions of NLEP 2012. The proposed development is permissible with Council's consent. The objectives of this zone include:

a) To provide a mixture of compatible land uses.

b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

c) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

The proposal for extended trading hours is not considered to be consistent with the objectives of the zone. The extended trading will increase late night activity and concentration of pedestrians within the public domain, increase competition for limited public transport, increase the likelihood for noise at unreasonable times and increase anti-social behaviour.

6.5 Public safety - licensed premises

The proposal for extending trading is considered to be not acceptable in the context of the mixed use development on the site, having regard for residential amenity and public safety.

A referral to NSW Police and the Licensing Reference Group has been undertaken, with NSW Police raising a number of concerns with the application for extended trading hours.

Internal referrals were undertaken as part of the overall assessment, with Council's Environmental Services and Community Planner (Community Safety) not supporting the application for extended trading hours.

4.2 Merit Considerations

4.2.1 Newcastle Development Control Plan [Section 79C(1)(a)(iii)]

Relevant provisions of Newcastle Development Control Plan 2012 (the DCP) are discussed below. The development as modified is not considered to be consistent with relevant sections of the DCP, on the basis of likely potential for adverse safety
and security impacts, adverse social impact and adverse residential amenity impacts through late night trading.

4.04 Safety and Security

It is considered that the application has been lodged with an insufficient level of information to determine compliance with this section, specifically Section 4.04.01 Crime Prevention and Public Safety and supporting Technical Manual - Crime Prevention and the Assessment of Development Applications.

The level of safety and security for both the occupants of existing residential apartments within the building and the general public within the public domain will possibly diminish through increased potential for the consumption of alcohol, concentration of people, competition for limited public transport and anti-social behaviour within the local area, if the hours of operation were extended. The proposal has not demonstrated compliance with the provisions of this section of the DCP.

4.05 Social Impact

The original development application proposed trading hours that are the same as proposed under this application to modify the Development Consent. Assessment of the original development application concluded that it was more appropriate and reasonable to reduce trading hours and consent was granted on this basis, with the premises to close at 12.00pm midnight Monday through Saturday and 10.00pm on Sunday nights.

The hours of operation were reduced to maintain a reasonable level of residential amenity for the occupants of the apartments that shared the building. Limiting the opening hours also assist in mitigating noise impacts and the potential the potential for late night anti-social behaviour occurring in and around this location.

The information submitted with the current application has not sufficiently demonstrated that extended late night trading will not cause unreasonable adverse social impacts or that management programs can be responsibly implemented on a consistent and regular basis to appropriately ameliorate the impacts.

The submitted Statement of Environmental Effects states that management of the Star Hotel are not aware of any complaints from nearby residents. However submissions suggest regular conversations with the operator expressing concerns have occurred around operating behaviour, noise, trading hours and anti-social behaviour, internal and external to the premises.

In summary, no information or evidence has been provided to demonstrate:

I. Achievement of performance criteria and measures identified in the Plan of Management for the hotel

II. Measures have been taken to effectively resolve resident complaints on an on-going operational basis
III. Compliance with existing live music and outdoor dining conditions and requirements

IV. Evidence of actioning recommendations identified in the Acoustic Assessment Report prepared November 2014 by Spectrum Acoustics as part of the original development consent.

The proposal has not appropriately established that it meets, or could achieve the provisions of this section of the DCP.

8.0 Public Participation

The proposal was publicly exhibited in accordance with Council's Notification Policy and a total of four submissions were received, one in support and three objecting to extended hours of operation. The key issues raised are discussed throughout this report.

4.2.3 Impacts on the Natural and Built Environment [Section 79C(1)(b)]

Residential amenity

The Star Hotel is located within a mixed use development containing a total of 31 residential apartments within the building. No evidence or reasonable level of information has been submitted to support the application for the extended late night trading and to demonstrate that there will not be significant adverse impacts on the residential amenity for the occupants of these apartments.

Unfortunately no new or additional acoustic assessments or noise reports; no social impact assessments and no crime prevention through environmental design (CPTED) assessments have been submitted. The provision of such assessment enable a full and thorough understanding of the implications for such development on residential amenity, and reputable assessments also outline a range of potential mitigation measure to ameliorate unacceptable impacts. In this instance, such assessments could have examined in detail the ramifications of the proposed extended trading hours and also provided compliance evidence in respect of the current trial period under the existing development consent.

A referral to NSW Police and the Liquor Licensing Reference Group was undertaken and concerns have been raised regarding the potential for adverse environmental impacts on the residents within the property.

Acoustic Privacy

The application was referred internally to Council's Environmental Services for assessment. Advice concluded that there was a likely risk of unreasonable noise impacts upon nearby residents and potential breaches of relevant noise legislation and guidelines.

It is noted that the two acoustic reports submitted as part of the application were previously submitted to Council, for different reasons relating to the assessment of amplified music from the premises. One report was submitted in relation to a
separate application seeking approval of amplified musical entertainment (which was not supported by Council on the basis of the report itself). The other report was provided to an authorised officer in response to Council enforcement action relating to an alleged breach of DA 2014/1214 (Condition 16 - restricting live musical entertainment) following Council having received a complaint over noise impacts from the premises. As the applicant is not seeking to delete or amend Condition 16, restricting live musical entertainment, these reports are considered to be not directly relevant to the assessment of this application.

During the trial period for extended trading (as granted by the NSW Land & Environment Court), it is apparent that some residents living above were adversely impacted by noise from the premises, specifically from amplified music and patron behaviour. This resulted in repeated direct communications with the Manager of the premises and residents living above. This is evidenced in copies of numerous phone messages on different dates and times provided to Council in the submissions received. NSW Police have also suggested that the extended trading is likely to result in increased noise impacts upon residents during the night time period.

The evidence from submissions indicates that a level of acoustic impact has occurred late at night during the trial period which has been considered unreasonable by some nearby residents. NSW Police who have also attended the premises following complaints and have undertaken enforcement action in response to noise considered in breach of relevant legislation, and/or licence conditions.

In addition, concern exists that impacts and alleged breaches of noise regulations and conditions of consent have occurred during the trial period when it would be reasonably expected that the hotel management would take extra care to operate lawfully and with minimal disturbance to help ensure the trial period could be viewed as successful. The applicant has responded to the alleged breaches of consent during the trial period by stating that it is a separate matter not relevant to a merit based assessment of this application. Assessment findings have concluded that it is clear that at a minimum Condition 16 of DA 2014/1214 has been breached requiring "no live musical entertainment..." during the trial period and on-going current operations. This raises concern with the likely future compliance with conditions of consent.

Unfortunately, the development consent issued by the Court for the trial period did not include any specific requirements for assessments and/or scientific monitoring to be undertaken that could be used to evaluate the success or otherwise of the trial. This omission has meant that the applicant cannot conclusively demonstrate that the extended hours don’t adversely impact aural privacy.

It is also recognised that the level of impact depends on a number of other factors which cannot be quantified, such as behaviour of patrons and staff, adherence to management plans, potential breaches of development consent and behaviour of patrons in public areas outside the premises.

It is noted that long established licenced premises will generate noise complaints occasionally which can require enforcement action, however, there are no clear
criteria to indicate how many complaints or potential breaches are considered reasonable or acceptable. The proposal for extended trading will result in an additional six hours per week of potential noise exposure on nearby residents.

Assessment of this application includes consideration of multiple factors such as public safety, comments of a primary regulator (NSW Police), submissions of neighbouring residents, planning precedence, history of compliance with existing conditions of consent and increased risk of unacceptable noise impacts.

Comments provided by NSW Police and public submissions indicate that noise from amplified sound and patrons has caused unreasonable impacts upon the local amenity at various times. It is considered that there is a need for appropriate acoustic assessment and attenuation measures to mitigate these impacts to an acceptable level if the premises were to pursue any future proposal for amplified entertainment and extended trading.

It is considered that that the proposed extended trading hours will likely result in an increased risk of unreasonable noise impacts upon nearby residents and potential breaches of relevant noise legislation and guidelines.

Social Impact

The information submitted with the current S96(1A) modification application has not sufficiently demonstrated that adverse social impacts will not result from late night trading at the premises. Furthermore, there is significant potential for cumulative impacts from the precedent that would be set if approval is granted, as other similar premises would seek to extend their trading hours in order to compete for business.

The information that has been submitted with the application states that management at the premises are not aware of any complaints from residential occupiers. However, submissions suggest regular conversations with the operator, expressing concerns around operating behaviour, noise, trading hours and anti-social behaviour internal and external to the premises.

Safety and Security

The level of safety and security for residents of the apartments above and the general public using the streets is likely to be compromised through increased opportunities for late night consumption of alcohol, greater concentrations of people late at night, competition for limited public transport and anti-social behaviour within the local area. These concerns were also included in advice received from NSW Police.

Public Interest and Precedent

The application to extend trading hours has not demonstrated that appropriate mitigation measures can be implemented to responsibly manage significant adverse environmental impacts. Therefore, it is not in the public interest to support the S96(1A) modification application for extended trading.
Advice from NSW Police includes concerns relating to the lack of public transport to address increased demands past midnight. This is likely to cause issues with ‘lock out times’ established in the area to manage public transport demands. The increased trading hours are also not consistent with other small bars nearby.

It is reasoned that any increase in patron movements associated with the premises operating later in the night may have the consequential outcome of an upsurge in negative social impacts. The NSW Police have referenced studies indicating that alcohol-related intoxication and harm increase by 15 and 20 percent every hour of trading after midnight, and that reduced trading hours generate positive outcomes for drinking culture.

Further, there is the potential for setting of a precedent. The justification submitted in support of the proposal relies mainly on the premises being able to have an equal footing with other like venues, however, other like venues currently close at midnight. The venues that do have extended trading hours are of a larger scale and those other venues are not necessarily within a mixed use (including residential) development such as the Star Hotel.

Larger licenced venues are typically subjected to more rigour in terms of approval processes, particularly in terms of Social Impact, Crime Prevention assessments and Acoustic Reports. Liquor licensing requirements for larger venues are also more rigorous than that which currently exists for a smaller venue like the Star Hotel.

In this respect, it is considered that the proposed extended trading hours are not in the public interest due to a broad range of potential negative impacts arising that cannot be reasonable mitigated. It is also likely that approval of the application would set an undesirable precedent where other smaller licenced venues in the CBD will seek similar approvals in order to compete. Incremental and adhoc approvals of this nature are considered to be contrary to the public interest and have the prospect of undermining the confidence of the public in Council’s assessment processes.

4.2.4 Social and Economic Impacts in the Locality [Section 79C(1)(b)]

The proposal for extended trading is considered likely to have unreasonable social and economic impacts on the nearby owners and residents within the site and social impacts more broadly through extended trading at this location as discussed in this report.

4.2.5 Suitability of the Site for the Development [Section 79C(1)(c)]

The proposal for extended trading is considered unsuitable for this site, primarily based on likely adverse residential amenity impacts.

4.2.6 Submissions made in accordance with the Act or Regulations [Section 79C(1)(d)]
The application was notified in accordance with Council's DCP for a period of 14 days. A total of four submissions were received, one in support of the proposal and three objecting to the proposal to extend trading hours.

Key issues raised in the submissions have been discussed in this report. The following is a summary of the issues raised and direct response to these issues as follows:

1. Alleged non-compliance with previously imposed conditions of consent

   Submissions raise concern about breaches of existing conditions of consent; namely operating hours; the closing of doors and removal of outdoor dining activities at 10:00pm; live musical entertainment being held at the premises and the tolerance afforded to patrons when entering and leaving the premises.

   Comment:

   Extended trading outside of existing consent conditions has been evident before and after the granting of a 'trial period' consent for extended trading hours. The conduct of live musical entertainment has also been evidenced through submissions and via social media posted by the Star Hotel itself. Live entertainment continues to be held at the premises without consent and actively promoted by management.

   Neither the previous S96(1A) application, refused under delegation, nor the subject application, has sought to remove or modify the condition of consent that restricts live musical entertainment.

2. Breach of the trial period limitations

   Submissions have raised concerns about breaches of trial period conditions as they relate to trading hours and also the operational management parameters relating to outdoor dining area within Devonshire Lane.

   Comment:

   The Court ordered 'trial period' consent was granted with amended conditions relating to extended trading and additional operational parameters associated with the outdoor dining area within Devonshire Lane.

   As evidenced through submissions received, complaints made and attendance at the premises by NSW Police, trading hours and activities within Devonshire Lane and the effectiveness of implementation of the premises' Plan of Management is questionable.

3. Safety and security

   Submissions have raised concern in respect to the safety and security of the residents within the building, primarily arising from intoxicated patrons entering and leaving the venue and also through alleged ineffective security arrangements that allow patrons to behave inappropriately without taking effective and prompt action.
Comment:

Submissions have raised concern that the proposal for extended trading will likely increase the risk of anti-social behaviour at this premise, and therefore lower the level of safety and security felt by residents within the building. NSW Police, as part of their concerns with the proposal, have provided evidence of impacts likely from late night trading of licensed premises.

It is considered reasonable to conclude that the apparent ineffective security measures and/or lack of implementation of the Plan of Management for the premises will also likely result in increased safety and security risks to nearby residents and also, more broadly, within the public domain.

iv.  Noise and anti-social behaviour

Submissions have raised concerns over excessive noise, primarily from live entertainment, but also from intoxicated patrons entering and leaving the premises. Submissions have also raised concerns over the anti-social behaviour experienced from patrons outside the premises and at the entrance to the residential apartments contained within the building.

Comment:

Submissions refer to numerous conversations with management in an attempt to address on-going adverse operational impacts associated with this premise, namely trading hours, the ceasing or relocating of activity / closing of doors to the outdoor dining area within Devonshire Lane when required and the turning down of music at reasonable times.

Advice received from NSW Police and internally from Environmental Services also suggests unacceptable noise levels at this premise at varying times; refer to complaints being made and also to the potential for increased anti-social behaviour through extended trading.

v.  Failure to implement the measures agreed to in the Management Plan

Submissions have raised concern that security staff do not appropriately and effectively implement the measures within the Plan of Management, set down to assist in ensuring the orderly and predictable operation of the premises without impact to nearby residents and the broader public within this location.

Comment:

There is a Plan of Management that is required to be implemented as part of the operation of the premise, approved under the consent issued in respect of Development Application 2014/1214.

The submission in support of the proposal advised that the submitter has ‘good communications and a co-operative relationship with the operator/licensee’. However, as previously discussed, submissions were also received stating that the Plan of Management is not being implemented.
All relevant matters raised in the submissions have been considered under the provisions of Section 79C of the *Environmental Planning and Assessment Act 1979* and have been discussed in this report.

4.2.7 Public Interest [Section 79C(1)(e)]

As previously stated, it is considered that the proposal is not in the public interest as it is likely to lead to adverse social and security impacts in the immediate locality.

5.0 CONCLUSION

The proposal has been considered against the relevant heads of considerations under section 79C of the *Environmental Planning and Assessment Act 1979* and found to unacceptable. It is recommended that the application be refused for the reasons as set-out in Attachment B.

ATTACHMENTS

**Attachment A:** Documentation submitted for modification application - 10/569 and 11/569 Hunter Street Newcastle West

**Attachment B:** Schedule of Reasons for Refusal - 10/569 and 11/569 Hunter Street, Newcastle West

**Attachment C:** Processing Chronology - 10/569 and 11/569 Hunter Street, Newcastle West

**Attachment D:** NSW Police referral advice - 10/569 and 11/569 Hunter Street, Newcastle West
Application to modify a development consent

Use this form to modify the terms of development consent (i.e., the plans or the conditions). The application can only be made if the development to which the consent as proposed to be modified will remain substantially the same as the development for which the consent was originally granted. Failure to complete all relevant sections or provide sufficient information/detail in your application may result in your application being returned or its assessment delayed. All information must be legible and all payments must be made on lodgement of the application, otherwise your application will not be accepted.

Part 1: Applicant and site details

1. Your name, address and details
   Title: [ ] Mr [ ] Mrs [ ] Miss [ ] Ms [ ] Other [ ]
   Family name (or company): Chris Mills
   Given names (or ACN): E1 - Long Legal, Pty Ltd
   Postal address: Level 1, 140 King Street, Newcastle
   Postcode: 2300
   Phone: 02 4924 1329
   Alternative phone: 
   Fax: 
   E-mail: grant.long@longlegal.com.au
   Contact person: Grant Long
   Reference no.

2. Location and title description of the property
   Unit No: [ ] House No: 564, Street: Hunter
   Locality: Newcastle West
   Lot(s): 32/33
   Section: 
   Deposited Plan(s): 
   Strata plan: G190

3. Who owns the land?
   Give the name of every owner and their postal address. (It is not to be marked 'Core' if the company submitting the application for sufficient space is available please attach a separate list.

Name 1: Mark William Sandwith
   Address: PO Box 3940, Osterley, NSW
   Postcode: 2283
   Phone: 02 8594 8578

Name 2: Sherida Gans
   Address: PO Box 3940, Osterley, NSW
   Postcode: 2283
   Phone: 02 8594 8578

Form 04 Modification of consent, Issue 18, 7-3-17

Date: 02 May 2017

RECEIVED

BY: Angie, ACC.
### CITY OF NEWCASTLE
Development Applications Committee Meeting 12 December 2017

#### Part 2: Development details

<table>
<thead>
<tr>
<th>4. What consent is to be modified?</th>
<th>Development Application No. 2014/12/14</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Date Consent Issued 22 December 2014</td>
</tr>
<tr>
<td>Description of approved development</td>
<td>INTEREST IN FURTHER CHANGE OF USE TO Food &amp; Drink Premises (Hotel)</td>
</tr>
</tbody>
</table>

Is this application the subject of enforcement action by Council’s Compliance Services Department?

- [ ] Yes
- [x] No

<table>
<thead>
<tr>
<th>5. Description of the proposed modification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please tick the appropriate box and if unsure please consult with the duty officer.</td>
</tr>
<tr>
<td>Attach a detailed submission if the space is insufficient.</td>
</tr>
</tbody>
</table>

- [ ] Minor modification [section 96(1)]
  - The modification is merely intended to correct a minor error, mis-description or miscalculation.
- [x] Modification involving minimal environmental impact [section 96(1A)].
- [ ] Modification of consents granted by the Court [section 96(1AA)]
- [ ] Other modification [section 96(2)].

Describe the proposed modification/s and expected impacts of the modification/s.

TO PERMANENTLY EXTEND HOURS OF OPERATION TO 1:00 AM MONDAY TO SATURDAY (IN LIEU OF MIDNIGHT)

Are any conditions of the development consent proposed to be amended? If so, please list the numbers and required changes.

**CONDITION 13 - HOURS OF OPERATION**

AS NOTED ABOVE, FINISH TIME TO BE 1:00 AM MONDAY TO SATURDAY (IN LIEU OF MIDNIGHT)

In case of a development involving the use of a building as an entertainment venue, function centre, pub, registered club or restaurant, please specify the maximum number of persons proposed to occupy, at any one time, that part of the building being used for the specified use.

150 PERSONS (NO CHANGE TO APPROVAL)
### Required documents

- 1 electronic of amended plans, elevations and site plan
- 1 electronic copy of Notification plan* (A4) – where required
- 1 electronic copy of Amended Statement of Environmental Impacts*
- A pdf copy of the application form, all documents and plans contained in the application are to be copied onto a non-returnable CD or USB stick. The pdf copies should be prepared in accordance with the specifications detailed in the document titled 'Plan Standards' available on Council's website.

### Other (please specify)

- Plan reference numbers
- Other document reference number

### Amended Storm water Plan - 28 City Strawl Newcastle

### Cost of the development

- Does the S96 application increase the cost of development?
  - Yes
  - Revised cost of development $..........................
  - Additional cost (as a result of the modification) $.............
  - No

The cost of the development is the genuine estimate of: (a) the cost associated with the construction of the building; and (b) the cost associated with the preparation of the building for which it is to be used (such as the cost of installing plant, fittings, fixtures and equipment). Owner builders will need to include a full cost of labour.

### Have you discussed the plans with a Council Officer?

- Yes
  - Whom did you speak to? (if known)
  - JAMES MARSHALL
- No

### Owner's consent and applicant's declaration

**Part 3: Owner's consent and applicant's declaration**

As owner/s of the land to which this application relates, I/we consent to this application. I/we also give consent for authorised Council Officers to enter the land to carry out inspections.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Name/s</th>
<th>Capacity</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Signature]</td>
<td>[Name/s]</td>
<td>[Capacity]</td>
<td>[Date]</td>
</tr>
<tr>
<td>[Signature]</td>
<td>[Name/s]</td>
<td>[Capacity]</td>
<td>[Date]</td>
</tr>
</tbody>
</table>

If the owner is a company or owners' association, must be signed by a director, secretary or authorised delegate.

If the property is strata title, the form must be signed by the authorised delegate of the body corporate.

*If signing on the owner's behalf as the owner's legal representative, you must state the nature of your legal authority and attach any available evidence (eg. power of attorney, executor, trustee, company director).
10. Probity

Are parties with pecuniary or non-pecuniary interest:

a) a staff member, councillor, contractor or related to someone who is a staff member, councillor, contractor of The City of Newcastle? or,

b) a State or Federal Member of Parliament?

☐ Yes. If yes, state the relationship

☒ No

11. Political Donations and Gifts

Section 147 of the Environmental Planning and Assessment Act 1979 requires a person to disclose reportable political donations and gifts made by any person with a financial interest in the application within the period commencing two years before the application is made and ending when the application is determined.

The following information is to be included on the statement:

(a) all reportable political donations made to any local Councilor or Council employee;

(b) all gifts made to any local councilor or employee of that Council.

Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two-year period before the date of this application?

☐ Yes. If yes, the statement must be attached. All disclosure statements of reportable donations and gifts will be made publicly available on Council’s website.

☒ No, but in signing this application I undertake to disclose to Council in writing, within seven days, any reportable political donation or gift made after the lodgment of the application and prior to its determination.

Council has prepared a Political Donations and Gifts Disclosure Statement, incorporating explanatory information, which is available on Council’s website www.newcastle.nsw.gov.au or at Council’s Customer Enquiry Counter.

Note: Failure to disclose relevant information, or make a false disclosure statement is an offence under the Act. The maximum penalty for the offence is currently $22,000.

12. Applicant’s declaration

- I apply for consent to carry out the development described in this application.

- I declare that all the information given is true and correct.

- I declare that any electronic data provided is a true copy of all plans and associated documents submitted with this application.

- I understand that if incomplete, the application may be delayed, rejected or returned.

- I understand that the information supplied on this form and any related document may be made available to the public for inspection both at Council and on Council’s website, and will be available for copying at Council. I indemnify all persons using the development application and documents in accordance with the Environmental Planning and Assessment Act, 1979 against any claim or action in respect of breach of copyright.

Signature: ............................................................... Date: 25-1-17
## Protecting your privacy

Newcastle City Council is committed to protecting your privacy. We take reasonable steps to comply with relevant legislation and Council’s Privacy Management Plan.

<table>
<thead>
<tr>
<th>Purpose of collection:</th>
<th>To enable Council as the consent authority to assess your proposal.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intended recipients:</td>
<td>Council staff and other government agencies that may be required to assess the proposal.</td>
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<tr>
<td>Supply:</td>
<td>The information is a statutory requirement related to the assessment of the application.</td>
</tr>
<tr>
<td>Consequence of non-provision:</td>
<td>Your application may not be accepted or processed due to a lack of information.</td>
</tr>
<tr>
<td>Storage and Security:</td>
<td>Newcastle City Council, 282 King Street Newcastle 2300 will store details of the application. Individuals can access the details of the application under the Government Information (Public Access) Act 2009.</td>
</tr>
<tr>
<td>Access:</td>
<td>Your information can be checked for accuracy by calling (02)4974 2000.</td>
</tr>
</tbody>
</table>

### How to lodge your application

Applications can be lodged either:

1. **In person** at the Customer Enquiry Centre, located on the ground floor of 282 King Street, Newcastle. We are open for business from 8.30am to 5.00pm, Mondays to Fridays. Payments are only accepted between 8.30am and 4.00pm. It is recommended that an appointment be made with the duty officer when lodging your application. A duty officer is available to provide basic information in relation to development applications, until 4pm daily by phoning (02) 4974 2036 or visiting Council’s Offices.

2. **By mail** - Postal address: The General Manager, 'The City of Newcastle', PO Box 489 Newcastle 2300.

### Fees

Fees are calculated on a scale based on the contract value of the work or number of lots. Fee quotes can be obtained by contacting Council on (02)4974 2000.

### Payment Methods

You can pay by cash, cheque or the following debit cards using EFTPOS: American Express, Visa or Mastercard. Make cheques payable to 'Newcastle City Council'. Do not send cash in the mail.

A credit card processing fee applies to credit card transactions, reflecting bank fees charged to the 'Newcastle City Council' for card payments.

### Acknowledgement

Once your application has been received and accepted you will receive a letter and receipt specifying the amount of fees paid, and the registered number of the application.

### How to contact us:

- **Phone:** (02) 4974 2000
- **Fax:** (02) 4974 2222
- **E-mail:** mail@ncc.nsw.gov.au
## OFFICE USE

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<td>DA Fee - Signage</td>
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<td>Statement of Environmental Effects</td>
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<td>Notification</td>
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<td></td>
<td>Stormwater Management Plans</td>
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<td>Integrated dev.</td>
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<td>Long Service Levy Fee</td>
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<td>S94 Levy</td>
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<tr>
<td>Additional Plan 1st Fee</td>
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<td>Application form completed</td>
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<tr>
<td><strong>Total</strong></td>
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<td></td>
</tr>
</tbody>
</table>

## Description:

☐ Simple  ☐ Complex  ☐ Not Required

**Political Donations & Gifts**

Has a political donation/gift been disclosed by a person with a financial interest in the application? I.e. the form filled out in the positive or a separate disclosure received.

☐ Yes (if yes, register and scan into ECM)  ☐ No

Accepted by ........................................... Date: ...........................................

Registered by ........................................... Date: ...........................................
26 September 2017.

Ms Amanda Gale
Senior Development Officer (Planning)
Newcastle City Council
PO Box 489
Newcastle NSW 2300

Dear Ms Gale,

Re Modification Application No: DA2014/1214.01

We are writing in response to your letter dated 13 September 2017 requesting additional information in relation to Modification Application Number DA2014/1214.01. This application relates to the amendment of development consent condition 13 – extension of trading hours.

We understand that Council has raised a number of concerns in relation to our proposal to extend the operating hours of The Star Hotel until 1.00 am Monday to Saturday, these being:

1. Non-compliance with conditions of development consent
2. Residential amenity
3. Acoustic privacy
4. Social Impact – safety and security
5. Public Interest and precedent

1. Compliance with the existing conditions of Development Consent DA2014/1214

The information provided in this letter is to supplement the information already provided in the Section 98 Modification Application lodged with Council on 2 May 2017.

This letter does not address those issues raised by Council in relation to non-compliance with the conditions of the current development consent. Compliance issues are separate to merit assessment issues and should be dealt with by Council on a separate basis altogether.
2. Residential Amenity

It is critical to the assessment of this application to have regard to the context in which it was lodged. Previous Court proceedings considered merit issues and it was agreed to a trial period. This trial has been a success.

The Star Hotel has a strict Plan of Management in place to manage any adverse impacts the venue may have on residents and the local community.

Complaints from Residents In the Complex

In the event that a resident of the complex should wish to make a complaint about excessive noise or anti-social behaviour occurring at the venue, all residents within the complex have been given the manager’s private mobile phone number and are encouraged to use this at any time.

Every complaint received by the venue manager or any other venue staff is carefully recorded, including the complainants’ details, the nature of the complaint and what action is to be taken by the venue to address the complaint.

To date however, no complaints in relation to antisocial behaviour or excessive noise generated by patrons have been received by venue management either during the trial period for extended trading hours or since its conclusion.

Objections to the Application for Extended Trading Hours

Further, we note that Council has stated that its recommendation that the modification application be withdrawn is “due to the number of key concerns raised”. We are puzzled by this as the letter from Council clearly states that only 3 objections to the modification application were received. Given there are 31 residential units in the complex, 3 objections do not constitute a large number of complaints.

3. Acoustic Privacy

We note that Council has stated that the police have attended the venue as a result of noise complaint(s) from residents. The venue management has not been made aware of any such complaints either by residents or the police nor is there any record of the police attending the venue to respond to any such incident. It is standard procedure for our security personnel to log any such attendance by police. No such incident has been logged.
4. Social Impact – Safety and Security

The Star Hotel is very conscious of its responsibility to minimise any potential adverse social impact upon the residential amenity in the locality.

Security personnel are at the venue from 7pm on both Friday and Saturday nights and all possible measures are employed to control patron behaviour both while attending and leaving the premises. We are instructed that the that the venue has not had an incident requiring police or ambulance to attend since its opening, a strong indication that the current measures are successful.

Further, we note that Council has stated that there have been "regular conversations with the operator expressing concerns around operating behaviour, noise, trading hours and antisocial behaviour". Venue management maintain that they had not been approached by Council in relation to these concerns prior to Council's letter dated 13 September 2017.

5. Precedent and Public Interest

We dispute Council's position that an extension to The Star's trading hours will set a precedent for other small bars in the vicinity to seek similar approvals.

The Star Hotel is not a small bar and does not operate with a Small Bar Licence. A small bar licence applies to small intimate venues which are limited to a maximum capacity of 100 patrons.

The Star Hotel operates with a full hotel licence and is not subject to the same conditions as a small bar. Extension of the venue's trading hours therefore cannot set a precedent for other small bars in the area. Further, other venues in the vicinity have much later closing times. For example, Wests City trades until 3.00am on Friday and Saturday nights, the King Street Hotel trades until 3.30am and Finnegan's Hotel trades until 2.30am on Friday and Saturday nights.

As mentioned earlier, The Star Hotel has implemented a comprehensive Plan of Management for the premises. This plan is available to any resident in the locality and their input in relation to any improvements is welcomed by management. This, together with the other measures already successfully implemented by management of the venue, should assist in avoiding or minimising any adverse impacts on the amenity of the residential locality and on the public interest.

Yours Faithfully,

[Signature]

Grant Long
Principal Lawyer
14 October 2016

MAC160331LR1

Attention: Chris Mills
Star Hotel
410 King Street
Newcastle NSW 2300

Dear Chris,

Noise Assessment – Star Hotel Live Entertainment.

Introduction

Muller Acoustic Consulting Pty Ltd (MAC) has been commissioned by the Star Hotel (the 'Hotel') to prepare a Noise Assessment (NA) to quantify emissions from live entertainment/music from the Hotel and compare results against relevant criteria.

This assessment has been completed in accordance with the following policies and guidelines:

- Environment Protection Authority (EPA) 2000, NSW Industrial Noise Policy (INP); and
- The Office of Liquor, Gaming and Racing (OLGR) criteria related to licensed premises.

The following letter report presents the results, findings and recommendations following a noise monitoring assessment at 410 King Street on the evening of 7 October 2016.
Criteria

The NSW EPA's Noise Guide for Local Government (NGFLG) (2013) summarises criteria related to licensed premises. The OLG criteria are reproduced from NGFLG below and have been adopted as the principle criteria for residential receivers in this assessment:

"The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in an Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 7:00am and 12:00 midnight at the boundary of any affected residence."

"The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in an Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 midnight and 7:00am at the boundary of any affected residence. Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00am."

The relevant OLG criteria was derived by analysing single octave LA90 statistical levels from background data obtained at 7:04pm on the evening of 7 October 2016. It is noted that during the assessment patron noise was a contributing factor to ambient levels, therefore background noise measurements were conducted within the car park at 420 King Street away from the Hotel and free from any project influence. The background noise monitoring position was selected to replicate that of the receiver at 410 King Street and had the same offset distance to road traffic noise on King and Hunter Streets which controlled ambient levels. Table 1 reproduces the calculated OLG noise criteria.

Table 1 OLG Criteria

<table>
<thead>
<tr>
<th>LA10 Noise Criteria, Octave Band Centre Frequency (Hz), dBA</th>
<th>31.5</th>
<th>63</th>
<th>125</th>
<th>250</th>
<th>500</th>
<th>1k</th>
<th>2k</th>
<th>4k</th>
<th>8k</th>
</tr>
</thead>
<tbody>
<tr>
<td>Octave Background (LA90)</td>
<td>22</td>
<td>35</td>
<td>41</td>
<td>41</td>
<td>43</td>
<td>47</td>
<td>43</td>
<td>33</td>
<td>21</td>
</tr>
<tr>
<td>LA10 criteria (background +5dB)</td>
<td>27</td>
<td>40</td>
<td>46</td>
<td>46</td>
<td>46</td>
<td>52</td>
<td>48</td>
<td>38</td>
<td>26</td>
</tr>
</tbody>
</table>
Results

An attended noise measurement of fifteen minutes in duration was completed externally at an elevated position adjacent to the first floor window of the residence directly above the entertainment space of the hotel. The measurement location was in Devonshire Street approximately 22m from King Street using a Class 1, SVANTEK 971 environmental noise analyser to quantify emissions with respect to the OLGR criteria.

The noise survey was conducted at the monitoring location in general accordance with the procedures described in Australian Standard AS 1055-1997, "Acoustics - Description and Measurement of Environmental Noise". Calibration of all instrumentation was checked using a Class 1, SVANTEK SV-33 calibrator, prior to and following measurements. Drift in calibration did not exceed ±0.5dB. All equipment carried appropriate and current NATA (or manufacturer) calibration certificates.

It is noted that some external patron noise influenced the reading which was unavoidable. Notwithstanding these periods were excluded from the analysed data set to ensure that live entertainment noise was the primary source of the assessment. It is noted that during the noise measurements, the ground floor doors remained closed.

Noise assessment measurements during live entertainment have been compared against the OLGR criteria with results presented in Table 2. It was noted that during attended measurements that live entertainment noise remained insidious at the external measurement location with the Hotel doors closed.

<table>
<thead>
<tr>
<th>LA10 Noise Criteria, Octave Band Centre Frequency (Hz), dBA</th>
</tr>
</thead>
<tbody>
<tr>
<td>31.5 63 125 250 500 1 k 2 k 4 k 8 k</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Received level       23 37 41 44 52 53 50 41 32</td>
</tr>
<tr>
<td>Criterions           27 40 45 46 48 52 48 39 29</td>
</tr>
<tr>
<td>Exceedance          -4 -3 -5 -2 4' 1' 2' 3' 6'</td>
</tr>
</tbody>
</table>

Note: It is noted that higher frequencies between 500Hz to 8kHz were influenced by mid/high noise entertainment areas.

Measurements identify that octave bands between 500Hz and 8kHz were above the relevant OLGR criteria, although it is noted that these levels were due to extraneous sources not associated with the Hotel (ie traffic and general public emissions). Frequencies where associated with live entertainment are primarily at lower frequencies between 31.5Hz and 250Hz. It is evident from attended measurements that low frequency noise emissions due to live entertainment were below the OLGR criteria.
This was verified by a five-minute internal validation measurement, conducted while live entertainment was occurring. The internal measurement location was adjacent to the northern most doors of the Hotel adjacent to Devonshire Street and was completed to gain a relationship between internal and external noise levels. The maximum sound pressure level during live entertainment was 80dBA. Analysis confirmed that low frequency emissions were prevalent, in particular at the octave band centre frequencies of 80Hz and 200Hz.

Summary

MAC have completed an assessment of live entertainment/music at the Star Hotel, 410 King Street, Newcastle, NSW. Attended measurements identify that live entertainment/music noise satisfied the relevant OGR criteria at the external first floor facade of neighbouring residential dwelling. It was noted that compliance was achieved with the northern most (double doors) closed. Therefore, it is recommended as a minimum that these doors remain closed when there is live entertainment performing at the Hotel and that any remaining doors closer to King Street are closed by 10pm.

We trust this letter report addresses your current requirements, although if you have any further questions, please feel free to call our office.

Yours sincerely,

Oliver Muller
Principal Acoustic Scientist
BSc(REM & HGeog)MAAS
omuller@nullarsacoustic.com
NOISE IMPACT ASSESSMENT
410 King St, Newcastle NSW 2300
Prepared for Star Hotel
Prepared by RCA Australia
RCA ref 12670-401/0
August 2016
RCA AUSTRALIA  
ABN 53 063 515 711  
92 Hill Street, CARRINGTON NSW 2264  
Telephone: +61 2 4962 9200  
Facsimile: +61 2 4962 9299  
Email: administrator@rca.com.au  
Internet: www.rca.com.au

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<td>Ali M</td>
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**DOCUMENT DISTRIBUTION**

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</table>
Contents

1 INTRODUCTION .................................................................1
2 DESCRIPTION OF THE LICENSED PREMISES ........................................1
   2.1 SITE DESCRIPTION .......................................................1
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ACOUSTIC IMPACT ASSESSMENT AT STAR HOTEL
AT
410 KING ST, NEWCASTLE, NSW 2300

1 INTRODUCTION
In response to the STAR HOTEL - BREACH OF DEVELOPMENT CONSENT DA 2014/1214 Notice from the Newcastle City Council, dated 3/11/2015, RCA Acoustics has been engaged to undertake an acoustic impact assessment of amplified music from the Star Hotel (the venue) to the residential units situated directly above the venue.

A detailed acoustic assessment was prepared by Spectrum Acoustics (dated November 2014). However, the report has excluded noise assessment from the amplified music on the apartments situated directly above the Star Hotel. The purpose of this assessment is to address the Council’s requirement to consider potential noise impacts within these apartments.

2 DESCRIPTION OF THE LICENSED PREMISES
2.1 SITE DESCRIPTION
The Star Hotel is situated at 410 King St, Newcastle, NSW, 2300 and is a two-story building with the music performance space located on the ground floor and residential apartments located directly above the venue. The venue is used for the performance of live and amplified music. Entry and egress are through a doorway located at the corner of the building (King St. and Devonshire St.). The site location is shown in the aerial image of the surrounding area, Figure 1.
3 ASSESSMENT CRITERION

The Newcastle City Council (NCC) adopts the 'Interim Technical Guideline for the Assessment and Control of Low-Frequency Noise from the Development of Musical Entertainment Venues' for assessing the potential for disturbance from licensed premises. The NCC assessment criteria are per 1/3 octave band frequency (31.5 Hz – 250 Hz inclusive) $L_{A,50,1/3}$ (dBA) or Adjusted $L_{A,50,1/3}$ (dBA). These unweighted levels are consistent with the approach of protecting 90% of the population by adopting the tenth percentile hearing threshold values developed by Kurasaka et al.\(^2\) see Table 1.

---

1 NSW Environment Protection Authority industrial Noise Policy, January 2000.

Star Noel
Noise Impact Assessment
440 KING ST, NEWCASTLE, NSW 2300
RCA ref 12570-401/D, August 2016
Table 1 NCC Assessment Criteria

<table>
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<th>NCC Assessment Criteria for audibility predictions</th>
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<td>40</td>
<td>42.8</td>
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<td>63</td>
<td>30.6</td>
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<tr>
<td>80</td>
<td>26.6</td>
<td></td>
</tr>
<tr>
<td>100</td>
<td>21.3</td>
<td></td>
</tr>
<tr>
<td>125</td>
<td>17.2</td>
<td></td>
</tr>
<tr>
<td>160</td>
<td>13.1</td>
<td></td>
</tr>
<tr>
<td>200</td>
<td>9.5</td>
<td></td>
</tr>
<tr>
<td>250</td>
<td>6.5</td>
<td></td>
</tr>
</tbody>
</table>

4 METHODOLOGY

For the purpose of determining the maximum allowable amplified music level at the performance space, two sound transmission paths for the amplified music to the residential units are identified and assessed in this report. The first path, is the sound transmission through the floor system between the venue and the apartments directly above it (Path-1). The second sound transmission path is the outside (flanking) sound reflection from the venue to the apartments above (Path-2). For each sound transmission path, field test measurements were conducted and the sound Transmission Losses (TL) are calculated.

The sound transmission loss through the floor system is calculated by measuring generated pink noise in the source room (the venue) and the transmitted noise to the receiver room (residential units). Two conventional loudspeakers were installed at the geometric centre of the venue and the averaged time-space Sound Pressure Levels (SPL) in 1/3 octave band frequencies were collected using a roving microphone over a 30 second sampling period.

The sound transmission loss associated with the Path-2 (outside reflected sound) was determined by measuring the SPL (in 1/3 octave band) at 2 meters outside of the venue in front of the closed non-fixed window situated at the eastern façade of the building. Calculations were conducted to allow for distance loss via the reflection path. In this calculation, the transmission loss through the opening windows of the residential units, are not taken into account in order to allow for these windows to be kept open.

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Star Hotel
Noise Impact Assessment
410 KING ST, NEWCASTLE, NSW 2300
RCA ref 12870-40/16, August 2016
5 MEASUREMENT

5.1 EQUIPMENT

Equipment used in the unattended noise monitoring is detailed in Table 2 and conforms to Australian Standard AS1259.2-1990 Acoustics - Sound level meters - Integrating – Averaging, Type 1 or 2. The equipment was calibrated with an acoustic calibrator, in accordance with Australian Standard AS1055 Acoustics – Description and Measurement of Environmental Noise, before and after the taking of measurements. In all cases, the requirement for less than 0.5 dB difference was met.

<table>
<thead>
<tr>
<th>Make/Model</th>
<th>Serial Number</th>
<th>Last Calibrated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Croma loudspeaker</td>
<td>L384002370</td>
<td>N/A</td>
</tr>
<tr>
<td>SVAN 971</td>
<td>55581</td>
<td>20/5/2016</td>
</tr>
<tr>
<td>B&amp;K 4230 Calibrator</td>
<td>1645584</td>
<td>21/10/16</td>
</tr>
</tbody>
</table>

5.2 MEASUREMENT RESULTS

The Transmission Losses (TL) of the two identified noise paths are calculated in 1/3 octave band frequency (31.5 Hz – 250 Hz inclusive). The transmission loss for the path with the least sound reduction was then added to the levels allowed by the NCC Guideline to determine the maximum allowable sound level in each band within the venue. The results are presented in Table 3.

<table>
<thead>
<tr>
<th>dB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Band centre frequency (Hz)</td>
</tr>
<tr>
<td>Path 1-TL</td>
</tr>
<tr>
<td>Path 2-TL</td>
</tr>
<tr>
<td>NCC Assessment Criteria</td>
</tr>
<tr>
<td>Maximum allowable SPL at the performance space</td>
</tr>
</tbody>
</table>

5.3 RECOMMENDATIONS

RCA Acoustics recommends the implementation of the following in-principle noise attenuation and operational management measures in order to protect the noise amenity of the assessed residential receivers.

Recommended noise mitigation measures include:

- It is noticed that the opening windows and doors at the eastern façade are not appropriately sealed. It is recommended that appropriate acoustic treatment of the
eastern windows and doors be implemented under the supervision of an appropriately qualified acoustic consultant.

- It is recommended to consider and implement the recommended maximum allowable noise levels at the performance space which are outlined in Table 3 in order to reduce the risk of noise disturbance associated with the conduct of amplified music.

### 6 DISCUSSION

In New South Wales (NSW), noise from licensed premises can be regulated by both the local consent authority or via the NSW Office of Liquor, Gaming and Racing (OLGR). In accordance with the OLGR condition, internal noise assessments for the case of mixed used buildings with apartment units or upper levels of dwellings are not obtainable. Therefore, the 'Interim Technical Guideline for the Assessment and Control of Low-Frequency Noise from the Development of Musical Entertainment Venues' adopted by the Newcastle City Council (NCC) is used as an assessment criteria for the assessment presented in this study. The approach to this assessment is to outline the maximum allowable SPL for low-frequency bands at the performance space rather than specifying for any particular style of music to be played at the venue.

### 7 CONCLUSION

RCA Acoustics have been engaged by the Star Hotel to undertake acoustic impact assessment for the amplified music played at the venue. RCA Australia have conducted the acoustic performance testing of the floor system that separates the performance space from the residential property situated directly above the venue. The testing results have been used to set a sound pressure level limit for the amplified music being played in the performance space. These operational limits and In-principle noise attenuation suggested are outlined in Section 6 of this report.

Thank you for the opportunity to provide this assessment. Please do not hesitate to contact the undersigned if you have any questions regarding this or any other acoustic or environmental matter.

Yours faithfully

RCA Acoustics

[Signature]

Ali Ahmadi B.Eng (Mech), M.Eng (Mech), PhD (Mech)
Acoustic Consultant

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Star Hotel
Noise Impact Assessment
410 KING ST, NEWCASTLE, NSW 2300
RCA ref 12570-4019, August 2015
DRAFT SCHEDULE OF REASONS FOR REFUSAL

Application No: DA2014/1214.01
Land: Lot 32 SP 90190
Lot 33 SP 90190
Property Address: 11/569 and 10/569 Hunter Street
Newcastle West NSW 2302
Proposed Development: Modification to Operating Hours of the Star Hotel

SCHEDULE 1

1. The application does not include sufficient information to demonstrate that the proposed extended trading hours will involve minimal environmental impact. [Section 96(1A) Environmental Planning and Assessment Act 1979]

2. The application does not include sufficient information to demonstrate that the proposed extended trading hours will not pose unreasonable adverse impacts on the amenity of occupants of the residential apartments located on the land and will not contribute to increased adverse social impacts within the local area. [Section 79C(1)(a)(b)(c)(d)(e) Environmental Planning and Assessment Act 1979]

3. The proposed extended trading hours is not consistent with the provisions of Newcastle Local Environmental Plan 2012, primarily with respect to Clause 2.3 Zone objectives and Land Use Table - Zone B4 Mixed Use objectives, ‘to provide a mixture of compatible land uses’ and Clause 6.5 Public safety - licensed premises. The extended trading hours will increase late night activity and concentrations of pedestrians within the public domain, increased completion for public transport and increased likelihood of noise at unreasonable times and anti-social behaviour. [Section 79C(1)(c) Environmental Planning and Assessment Act 1979]

4. The proposed extended trading hours is not consistent with relevant provisions of Newcastle Development Control Plan 2012. [Section 79C(1)(a) Environmental Planning and Assessment Act 1979]

5. The proposed extended trading hours will have an unreasonable social impact in the locality, through increased concentrations of people, noise and potential for increased anti-social behaviour. [Section 79C(1)(b) Environmental Planning and Assessment Act 1979]

6. The site of the premises is not suitable for extended trading hours due to the likelihood of adverse residential amenity impacts on the residential apartments that occupy the land. Reliance on strict control by management in operation of the premises, especially during hours of closure and exit of patrons will not adequately mitigate likely noise, social and anti-social behaviour impacts generated through extended trading hours. [Section 79C(1)(c) Environmental Planning and Assessment Act 1979]

7. Submissions received in response to public notification have raised issues of a nature and extent that establish that the proposed extended trading hours are likely to have unreasonable impacts on their residential amenity, due to noise, safety and security and social impacts. [Section 79C(1)(d) Environmental Planning and Assessment Act 1979]
8. The proposal to extend trading hours is contrary to the public interest with respect to orderly, predictable and compatible mix of land use activities within this local area and cumulative adverse social impact and public safety through competitive trading. [Section 78C(1)(e) Environmental Planning and Assessment Act 1979]

9. Approval of the proposal will set an undesirable precedent.
### PROCESSING CHRONOLOGY

**DA 2014/1214.01 - 10/569 AND 11/569 HUNTER STREET NEWCASTLE WEST**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 May 2017</td>
<td>Section 96(1A) Modification Application lodged</td>
</tr>
<tr>
<td>11 - 25 May 2017</td>
<td>Public exhibition period</td>
</tr>
<tr>
<td>23 May 2017</td>
<td>Application referred to internal and external stakeholders for review and comment</td>
</tr>
<tr>
<td>2 August 2017</td>
<td>Council advice to applicant regarding status update and key concerns associated with the application</td>
</tr>
<tr>
<td>13 September 2017</td>
<td>Council request for additional information and advising of key concerns associated with the application</td>
</tr>
<tr>
<td>26 September 2017</td>
<td>Application called-in by Councillor</td>
</tr>
<tr>
<td>27 September 2017</td>
<td>Additional Information in response to Council's request received from applicant</td>
</tr>
<tr>
<td>4 October 2017</td>
<td>Memo to Councillors regarding application and status update</td>
</tr>
<tr>
<td>27 October 2017</td>
<td>Additional information received from applicant</td>
</tr>
<tr>
<td>10 November 2017</td>
<td>Application called-in by Councillor</td>
</tr>
<tr>
<td>5 December 2017</td>
<td>Public Voice meeting</td>
</tr>
</tbody>
</table>
NEW SOUTH WALES POLICE FORCE
Newcastle City Local Area Command

Amanda Gale
Senior Development Officer
Newcastle City Council

25 May 2017

Development Application No: 2014/1214.01

Police have reviewed the 596 application to modify a development consent, ‘extension of trading hours’ by the applicant but still request that the below hours of operation remain on the following basis;

Hours of Operation;
Police recommend that the proposed operational hours of trade be restricted to those outlined below so as to not trade into ‘extended trading’ period;
Monday to Saturday – 7am to 12am
Sunday – 7am to 10pm

The premises’ is within a residential block of apartments. Police maintain concerns that an extension in the trading hours of the licensed premises may pose an adverse environmental effect on residents in the unit complex. The applicant has not supplied evidence that residents are supportive of a change in hours. Original plans indicated that the premises would be a restaurant and it would be fair to assume that some buyers invested in the apartments prior to the applicant’s involvement, expecting the premises to remain what it was illustrated to be.

Police have reviewed our records and we have attended the venue on at least 2 occasions during the trial period and noted both times that the noise level was excessive. There has also been at least one residence complaining about the level of noise emanating from the venue. Police are of the belief if the venue was to trade later than 12pm there would be a more noise complaints and would be detrimental to the environmental impact of the community.

It is noted that the applicant wishes for the later trade until 1am to allow them to operate on an equal footing with other premises with extended trading hours in their locality. It is advised that the premises is only one of two other small bars within a 300m radius that would close at 12am. If the business was to extend trading and close at 1am it would not only be competing with other smaller venues it would also be competing with larger licensed premises nearby and within the Newcastle City precinct which have ‘lock out’ times, increasing demands on public transport. A delay in available transport will not only cause an increase in pedestrian traffic but potentially an increase in public disharmony.

Furthermore, current research states that Australian jurisdictions should consider imposing trading hour restrictions. The rationale behind this is, the research evidence covered in the
review, "Interventions for reducing alcohol supply, alcohol demand and alcohol-related harm" shows that alcohol-related intoxication and harm increases by between 15 and 20 percent every hour of trading after midnight (Chikritzhs & Stockwell, 2002, 2006; Chikritzhs & Stockwell, 2007; Pennay et al., in press). This review has also found that the most evidence-based approach to reducing intoxication levels is through closing all venues earlier (Kypri et al., 2011; Kypri et al., 2014; Miller et al., 2012c). Research has also shown that when trading hour restrictions are applied widely, they can lead to positive changes in drinking culture (Miller et al., 2012c).

Police cannot in the foreseeable future, identify any positive reasons for extended hours of operation for the premises.

Yours Sincerely,

Steve LARSA
Detective Inspector
Crime Manager
Newcastle City LAC

Prepared by Sergeant Cusuples