

CITY OF NEWCASTLE

Minutes of the Extraordinary Development Applications Committee held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 12 December 2017 at 5.37pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, D Clausen, C Duncan, J Dunn, K Elliott, B Luke, J Mackenzie, A Robinson, A Rufo, E White and P Winney-Baartz.

IN ATTENDANCE

J Bath (Chief Executive Officer), A Baxter (Interim Director Corporate Services), K Liddell (Director Infrastructure), P Chrystal (Director Planning and Regulatory), M Blackburn-Smith (Manager Planning and Regulatory), E Kolatchew (Interim Manager Legal and Governance), J Gaynor (Manager Strategic Planning), F Leatham (Acting Manager Human Resources), D Sullivan (Learning and Organisational Development Manager), S Turkington (Acting Urban Planning Co-ordinator), K Hyland (Manager Communications and Engagement), B Johnson (Media Officer), M Murray (Policy Officer), K Sullivan (Council Services/Minutes) and J Redriff (Council Services/Webcasting).

MESSAGE OF ACKNOWLEDGEMENT

The Lord Mayor read the message of acknowledgement to the Awabakal and Worimi peoples.

PRAYER

The Lord Mayor read a prayer and a period of silence was observed in memory of those who served and died so that Council might meet in peace.

APOLOGIES

MOTION

Moved by Cr Luke, seconded by Cr Rufo

The apology submitted on behalf of Councillor Church be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Clausen

Councillor Clausen declared a less than significant non-pecuniary interest in Item 19 - DA 2014/1214.01 - 10/569 and 11/569 Hunter Street Newcastle stating that he had been contacted by a number of people in relation to the DA who had made donations to the Labor Party in the past. Councillor Clausen stated that the DA Applicant was not a political donor nor a member of any political party and he would remain in the Chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

Ni.

DEVELOPMENT APPLICATIONS

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

MOTION

Moved by Cr Luke, seconded by Cr Rufo

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.

Councillor Clausen gave notice of a foreshadowed motion.

For the Motion: Councillors Elliott, Mackenzie, Luke and Rufo.

Against the Motion: Lord Mayor, Cr Nelmes, Councillors Byrne, Clausen, Duncan, Dunn, Robinson, White and Winney-Baartz.

Defeated

MOTION

Moved by Cr Clausen, seconded by Cr Winney-Baartz

A THAT the section 96 application (DA2014/1214.01) to modify the Notice of Determination dated 22 December 2014 to extend the trading hours for the Star Hotel located at 10/569 & 11/569 Hunter Street Newcastle be approved subject to the conditions as set-out in Schedule 1 as follows:

Schedule 1

With reference to your application of 3 May 2017 it is advised that, pursuant to the provisions of Section 96 of the Act, the details of development consent granted by Council as per Notice of Determination dated 22 December 2014 are hereby modified by:

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

Amended Condition/s

Amended Condition 13

The modified hours of operation or trading of the Premises is for a 12 month trial period.

The trial will commence after the installation of required sound limiting and monitoring devices/equipment. The modified hours of operation or trading are to be not more than as outlined in the table below:

DAY	START	FINISH
Monday	7.00am	1:00am
Tuesday	7.00am	1:00am
Wednesday	7.00am	1:00am
Thursday	7.00am	1:00am
Friday	7.00am	1:00am
Saturday	7.00am	1:00am
Sunday	7.00am	10:00pm

After the completion of the 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, is to cease at 10:30pm Monday to Saturday. All patrons within the outdoor dining area are to be relocated to be within the building or, alternatively, leave the premises by 10:30pm (excluding Sundays, when the Premises is to close by 10:00pm).

The doors that open onto Devonshire Lane are to 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.

Amended Condition 16

No live musical entertainment is to be conducted at the premises unless a separate application and acoustic assessment, prepared by a qualified acoustic consultant, is submitted to and approved by Council.

Entertainment involving sound amplification (low level background music) within the premises may be provided only through a fixed "in-house" amplification/speaker system fitted with an electronic sound limiting device. The sound limit is to be set on the basis of written recommendations by a qualified acoustic consultant, such that amplified sound does not cause 'offensive noise' as defined under the *Protection of the Environment Operations Act 1997*. Noise from amplified sound is not to be audible within any residential premises between 12:00 midnight and 7:00am.

Additional Condition/s

New Condition

Sound monitoring equipment is to be installed to measure sound outputs and demonstrate that noise from amplified sound is not causing a disturbance to occupants of any residential premises and that amplified sound is not audible within any habitable room of residential premises between 12:00 midnight and 7:00am.

The sound monitoring equipment is to be located in accordance with the recommendations of a qualified acoustic consultant, including a location on the first floor of the building, in a location in close proximity to residential apartments. The sound monitoring equipment is to remain in place and be operational during trading hours for the full duration of the 12 month trial period.

The records of data captured by the required sound monitoring are to be retained and made available to Council officers or NSW Police, upon their request for such information. Any future application made to Council that seeks consent to permanently extend hours of operation or trading is to be supported by an acoustic assessment and data captured by the noise monitoring that is required to be undertaken.

New Condition

An acoustic assessment prepared by a qualified acoustic consultant is to be prepared and submitted to Council for approval in relation to any amplified sound entertainment at the premises and is to identify the amplifier sound limit that is appropriate for the premises. The report is to demonstrate that amplified sound will not cause 'offensive noise' as defined under the *Protection of the Environment Operations Act 1997*. Noise from amplified sound is not to be audible within any residential premises between 12:00 midnight and 7:00am.

New Condition

At all times when amplified sound entertainment is provided at the premises, the licensee is to ensure that all doors and windows of the premises are kept closed, with the exception of the outdoor dining area door/windows which are to be closed at 10:30pm, consistent with the required closing time of the outdoor dining area. The only exception to this requirement is as follows:

- a) Patrons are permitted entry and exit to and from the main entrance door, subject to monitoring and intervention (if necessary) by a staff member to ensure that doors are promptly closed.
- b) A contact number is to be notified to residents for the premises, for potential use while the premises are open, to enable residents to make complaints regarding noise impacts.

New Condition

Signage is to be installed directing patrons to public transport facilities. This information is to be displayed in a prominent location inside the premises at all exits.

New Condition

Signage is to be displayed advising patrons that the building also contains residential apartments and requiring that patrons respect the need to maintain residential amenity at all times, whether the patrons are inside or outside of the premises. This information is to be displayed in prominent locations inside the building at all entry/exit points.

B THAT those persons who made submissions be advised of Council's determination.

For the Motion:

Lord Mayor, Cr Nelmes, Councillors Byrne, Clausen, Duncan, Dunn, Mackenzie, Robinson, White and Winney-Baartz.

Against the Motion:

Councillors Elliott, Luke and Rufo.

Carried

The meeting concluded at 5.52pm.