



Business Paper

Independent Hearing and Assessment Panel

Tuesday, 19 September 2017

6:00pm

**Council Chambers,
Level 2, Administration Building
4-20 Eton Street, Sutherland**

ORDER OF BUSINESS

1. DISCLOSURES OF INTEREST

2. REPORTS FROM OFFICERS

IHAP003-18 Section 96 (2) modification to DA09/0412 - modify hours of operation on Saturday and Sunday to 2 am (MA17/0197) - Approved Development - Ratification of Trading Hours of an Existing Shop Currently Trading as a Food Shop (DA09/0412) - Cronulla Street, Cronulla (MA17/0197)

IHAP003-18 **PROPOSAL:** **SECTION 96 (2) MODIFICATION TO DA09/0412 -
MODIFY HOURS OF OPERATION ON SATURDAY AND SUNDAY TO 2
AM (MA17/0197) APPROVED DEVELOPMENT - RATIFICATION OF
TRADING HOURS OF AN EXISTING SHOP CURRENTLY TRADING AS
A FOOD SHOP (DA09/0412)**

PROPERTY: **LOTS 3 & 4 DP 19142, (NOS. 58-60) CRONULLA STREET, CRONULLA**

APPLICANT: **KAPLAN NAZLI**

FILE NUMBER: **MA17/0197**

Attachments: Appendix A,

REASON FOR REPORT

This application is referred to the Independent Hearing and Assessment Panel (IHAP) due to Councillor interest in the application.

APPROVED PROPOSAL

In June 2009 Council approved DA09/0412 for the ratification of trading hours of an existing food shop. There have been various s.96 applications in relation to the hours of operation since that time and currently the approved operating hours are 7 am to 12 midnight 7 days per week.

PROPOSED MODIFICATION

The specific modification sought to the approved development involves extending the operating hours. The proposed hours are:

- 7 am to Midnight Sunday to Thursday
- 7 am to 2:30 am Saturday and Sunday mornings.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. Pursuant to the provisions of Section 96 (2) of the Environmental Planning and Assessment Act 1979, the requested modification to Development Consent No. 09/0412 dated 12 June 2009 for Commercial Development - Ratification of Trading Hours of an Existing Shop Currently Trading as a Food Shop at Lots 3 & 4 DP 19142, (Nos. 58-60) Cronulla Street, Cronulla not be supported for the following reason(s):
2. The proposal is unacceptable pursuant to the provisions of s.79C(1)(a)(i) in that it is inconsistent with the objectives of the B3 Commercial Core expressed within the Sutherland Shire Local Environmental Plan 2015 (SSELP 2015), as the proposal fails to assist in the creation of an attractive, vibrant and safe public domain, with a high standard of urban design

and public amenity.

3. The proposal is unacceptable pursuant to the provisions of s.79C(1)(a)(iii) in that the proposal does not satisfy requirements of Clause 8.1 under Chapter 37 – Late Night Trading outlined within the Sutherland Shire Development Control Plan 2015 (SSDCP2015). The proposal has failed to address the necessary assessment principles for late night trading premises and is likely to result in significant amenity impacts for locality and surrounding residential premises.
4. The proposal is unacceptable pursuant to the provisions of s.79C(1)(b) in that the proposal is likely to result in unacceptable social impacts in the locality.
5. The proposal is unacceptable pursuant to the provisions of s.79C(1)(d) in that the submission by the NSW Police Force raises significant concerns with violent and anti-social behaviour associated with the extended trading hours.
6. The proposal is unacceptable pursuant to the provisions of s.79C(1)(e) in that the extended trading hours are not considered to be in the public interest.
7. The applicant has failed to lodge adequate information to enable an assessment of all aspects of the proposal, in that no acoustic report has been submitted.

ASSESSMENT OFFICER’S COMMENTARY

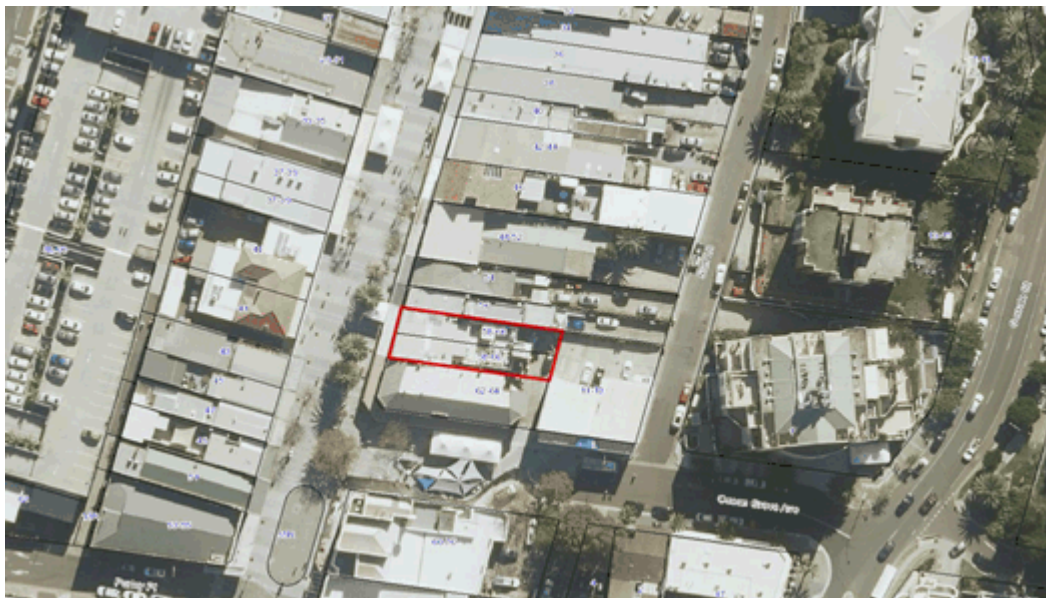
THE SITE

The subject site is located on eastern side of Cronulla Street, Cronulla. The site is located within Cronulla Mall, one property north of Ocean Grove Avenue.

Situated on the land is a 2 storey building containing 2 shops on the ground floor and a flat above. Neighbouring premises include Vodaphone, Fingertips, Factorie and Australia Post (opposite).

The street scene in the immediate vicinity of the subject land is characterised by mostly 2 storey shops and commercial buildings, some with residential units above.

A locality plan and aerial photo are provided below.



DESCRIPTION OF PROPOSAL

An application has been made under the provisions of Section 96 (2) of the Environmental Planning and Assessment Act, 1979 (EP&A Act) to modify the terms of Development Consent No. 09/0412.

Council granted approval for "*Commercial Development - Ratification of Trading Hours of an Existing Shop Currently Trading as a Food Shop*" on the subject property on 12 June 2009.

The specific modification sought to the approved development involves:

Amending Condition (3) to extend the operating hours of the shop from the currently approved 7am to 12 midnight, 7 days per week to the proposed hours of:

- 7 am to Midnight Sunday to Thursday
- 7 am to 2:30 am Saturday and Sunday mornings.

Condition 3 currently reads as follows**(3) Hours of Operation**

- The premises may operate as a food shop with hours of operation between 7:00 am and 12:00 midnight, seven (7) days per week.*
- Notwithstanding (a) above the premises may trade till 1am on Saturday and Sunday mornings on a twelve (12) month trial basis from the date of this consent. Should it be proposed to continue operating between 12 midnight and 1am on Saturday and Sunday mornings beyond that twelve (12) month period a further Section 96 application shall be lodged. If a Section 96 application is not lodged or is not approved the operation of the premises shall comply with the provisions of (a) above. (It is recommended that any application for a continuation of the trial period be supported by an acoustic report).*
- After 10.00 pm at night no music shall be played in the shop such that it is audible outside the shop or in the flat above.*
- Furniture shall not be placed in the outdoor eating area prior to 7 am daily and shall be completely removed by 12 midnight (1 am Saturday/ Sunday mornings during trial period). Placement and removal of the outdoor furniture shall take place in as quiet a manner as possible and tables and chairs shall be fitted with rubber or equivalent feet to minimise noise.*
- Packing up and cleaning operations shall be completed within half an hour after closing and no music shall be played within the shop whilst these activities are taking place.*

The 12 month trial period referred to in condition 3(b) and condition 3(d) expired on 10 March 2017.

APPROVED DEVELOPMENT

A detailed development assessment report in relation to this development under section 79C of the EP&A Act was undertaken for the original development application and for each of the subsequent s.96 applications.

BACKGROUND

A history of the development proposal is as follows:

- DA09/0412 was approved under delegation on 12 June 2009 subject to suitable conditions of development consent. At this time the approved hours of operation were 9.30 am till 12 midnight daily.
- Section 96 approvals were granted in 2011 and 2012 (MA11/0100 and MA11/0374) to allow a 12 month trial basis for the operation of the shop till 1am the following morning on Friday and Saturday nights. These trial consent periods have expired.
- In December 2014 an application (MA14/0312) was received to extend the hours of operation until 4am on New Year's Eve night/ New Year's Day morning and to modify the hours on Friday and Saturday nights until 2 am the following morning. Consent was granted for 2 New Year's Eves to extend the trading till 1 am on New Year's Day but the other hours of operation extensions were not approved.
- On 10 March 2016 the Director Shire Planning approved a s.96 Application (MA15/0387) to extend the operating hours from 7 am instead of 9 am. A 12 month trial to allow trading to 1am Saturday and Sunday mornings (Not the 2.30 am sought) was also approved. This trial period expired on 10 March 2017.
- The current modification application was submitted on 16 May 2017.
- The application was placed on exhibition, with the last date for submissions being 7 June 2017.

NATURE OF MODIFICATION SOUGHT

This application proposes the modification of Development Consent No. 09/0412 in accordance with Section 96(2) of the EP&A Act.

An assessment of the type of modification proposed has been carried out in accordance with the provisions of the Environmental Planning and Assessment Regulation 2000 (EP&AR 2000) and a Section 96(2) is the appropriate type of modification application.

PUBLIC PARTICIPATION

As the application involves modification under section 96(2) of the EP&A Act, the application has been notified in accordance with the Sutherland Shire Development Control Plan 2015 (SSDCP 2015).

Twelve adjoining or affected owners were notified of the proposal. One submission was received from a resident at 58-60 Cronulla Street in their email dated 24 May 2017 raising the following issues:

Issue 1: Noise

Comment: The proposed hours of operation are expected to have significant impact upon the acoustic amenity for neighbouring residents. No acoustic report has been submitted with this application and a detailed assessment of potential acoustic impacts is not able to be carried out. The application is recommended for refusal. No change to the existing hours of operation is recommended.

Issue 2: Gathering of People / Antisocial Behaviour

Comment: The NSW Police Force has outlined their strong objection to the proposal. Within their submission the Police have outlined the number of calls to the Cronulla Mall over the last 12 months and the amount of calls involving the subject premises directly. This submission highlights existing problems with gathering of people/ antisocial behaviour within the Cronulla Mall. As mentioned within the assessment section of this report approval of the proposed extended hours of operation is likely to encourage loitering and further antisocial behaviour.

Submission Review Panel (SRP)

As a result of the submissions received and the issues that were raised, Council's SRP decided that the issues raised in the submission were substantive, relevant and reasonable.

STATUTORY CONSIDERATIONS

The subject land is located within Zone B3 Commercial Core pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a food and drink premises, is a permissible land use within the zone with development consent from Council.

The following Environmental Planning Instruments (EPI's), Development Control Plans (DCP's), Codes or Policies are relevant to this application:

- Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015).
- Sutherland Shire Development Control Plan 2015 (DSSLEP 2015).

STATEMENT OF COMPLIANCE

The compliance table below contains a summary of applicable development standards and controls and a compliance checklist relative to these:

Standard/Control	Required	Proposed	Complies? (% Variation)
Sutherland Shire Development Control Plan 2015			
Hours of operation	Take away food and drink premises high activity area 6 am to 3 am	7 am to Midnight Sunday to Thursday 7 am to 2:30 am Saturday and Sunday mornings.	Yes (See assessment principles for late night trading premises under section 10)

SPECIALIST COMMENTS AND EXTERNAL REFERRALS

The application was referred to the following internal and external specialists for assessment and the following comments were received:

NSW Police Force – Miranda LAC

Sutherland Shire Council has a protocol for seeking input from the NSW Police Force in relation to development applications. This application was referred to the Miranda Local Area Command in accordance with this protocol.

Miranda Local Area Command by letter dated June 2017, have expressed strong objection to the proposed extension to the operating hours. This submission outlined that Police have increased interaction with the public during the hours between 11 pm and 3 am. Within this submission the Police have also outlined that the extended trade at the venue would increase the amount of antisocial behaviour incidents within the immediate vicinity of the premises and throughout the mall.

Council sought additional details from the NSW Police Force in relation to the concerns raised. Additional comments were received on 24 July 2017 outlining the number of incident dispatch calls for the Cronulla Mall within a 12 month period. The Police have detailed that a total of 841 calls have been responded to, 109 of these were alcohol related, 78 were acts of violence and 629 related to other matters. The Police have further outlined that 25 of these calls relate directly to the subject premises, with 18 relating to acts of violence, 4 intoxicated persons and 3 other.

The NSW Police Force has requested that the proposed modification not be approved.

Council's Environmental Health Unit

The application was referred to Councils Environmental Health Unit for comment, particularly in relation to noise. Councils Environmental Health Unit have advised that the proposal does not provide sufficient information to enable a detailed assessment, outlining that an acoustic report must be submitted to enable a detailed assessment, without which the application should not be supported.

There has previously been a trial period allowing trading until 1am on a Saturday and Sunday morning (MA15/0387). When this was approved by the Director Shire Planning on 10 March 2016 it included a recommendation in the trial hours condition that should the applicant seek to continue the trial hours that a s.96 application be lodged and that this application be accompanied by an acoustic report.

With regards to the proposed Plan of Management, Council's Environmental Health Unit have outlined that the premises intends to serve customers outside the shop, with no provision of seating or chairs available to patrons late at night. This plan is expected to significantly increase impacts on noise levels within the area. Council's Environmental Health Unit have outlined that such a plan should not be supported.

Council's Environmental Health Unit have outlined that the proposal should not be supported, until an acoustic report addressing the likely impacts to nearby commercial or residential premises from both patrons and mechanical plant operation. In their Plan of Management the applicant has stated that the mechanical exhaust can be turned off earlier. However this is impractical as the mechanical exhaust cannot be turned off until cooking has ceased.

An acoustic report has not been requested from the applicant given the significant concerns that have been raised by the NSW Police Force.

ASSESSMENT

A detailed assessment of the application has been carried out having regard to the Heads of Consideration under Section 79C(1) of the EP&A Act.

The following matters are considered important to this application.

Proposed Modification

As detailed above there have been numerous s.96 applications in relation to the hours of operation of this business. In relation to MA15/0387 it was recommended to the applicant in the consent that if they were to seek a continuation of the 1 am closing time for Saturday and Sunday mornings an acoustic report and the carrying out of any works recommended by the report would be desirable. No acoustic report accompanied this application although the applicant was verbal advised pre submission to submit one.

Assessment Principles for all Late Night Trading Premises

Hours of operation

While the DCP does allow for trading to 3am in high activity areas such as Cronulla Mall, the proposed operating hours to 2.30 am on Saturday and Sunday mornings are inconsistent with other food shops in the area. Trading past the lock out times of licensed premises (generally 1 am or earlier in this area) is likely to result in loitering of those persons who are unable to obtain entry to a licensed premise.

There is a residential unit located above the shop. Extending the trading hours is likely to result in an adverse impact. The applicant has failed to demonstrate that there is adequate acoustic treatment between the existing shop and units to justify the further extension to the trading hours.

Management Plan

Council's Environmental Health Unit has reviewed the proposed Plan of Management submitted by the applicant and raised concerns over proposed customer management. In particular Council's Health Unit has outlined that the plan to serve customers in-front of the premises upon the footpath is likely to generate significant acoustic impacts and should not be supported.

Miscellaneous

Council has undertaken a review of the submission received during notification and determined that the matters raised are reasonable, with a high probability of occurring. The premises have a history of attracting anti-social behaviour and violence, as outlined by the NSW Police Force. Measures outlined in the submitted Plan of Management are insufficient to address previous and potentially ongoing patron behaviour. The proposed hours of operation and locality of the premises is likely to impact upon surrounding residential amenity with regards to noise and antisocial behaviour. No adequate measures of mitigation have been proposed. Accordingly the operation of the business till 2.30 am on Saturday and Sunday mornings is not supported.

SECTION 94 CONTRIBUTIONS

Due to its nature, the proposed development, as modified, will not require or increase the demand for public facilities within the area. Accordingly, it does not generate any Section 94 / 94A contributions.

DECLARATIONS OF AFFILIATION, GIFTS AND POLITICAL DONATIONS

Section 147 of the EP&A Act requires the declaration of donations/gifts in excess of \$1000. In addition Council's development application form requires a general declaration of affiliation. In relation to this development application no declaration has been made:

CONCLUSION

The subject land is located within Zone B3 Commercial core pursuant to the provisions of SSLEP 2015. The proposed development, being a food and drink premises, is a permissible land use within the zone with development consent.

In response to public exhibition, 1 submission was received. The submission raises concerns in relation to noise and anti-social behaviour which are considered to be substantive, relevant and reasonable. Council's Environmental Health Unit and the NSW Police Force have also raised strong objection to the proposed extension of trading hours.

This application satisfies the requirement that the development to which the consent as modified relates will remain substantially the same development as that originally granted consent.

The application has been assessed having regard to the Heads of Consideration under Section 79C (1) of the EP&A Act, together with the provisions of SSLEP2015 and all relevant Council DCPs, Codes and Policies. Following detailed assessment it is considered that the modification application No 17/0197 cannot be supported for the reasons outlined in this report.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager, Major Development Assessment (CE).

File Number: MA17/0197

APPENDIX "A"**PREVIOUS MODIFICATION APPLICATION APPROVED CONDITIONS OF CONSENT****Development Application No. 09/0412****Modification Application No. 15/0387****GENERAL CONDITIONS**

These general conditions are imposed to ensure that the development is carried out in accordance with the development consent, having regard to the environmental circumstances of the site.

1. Approved Plans and Documents

The development shall be implemented substantially in accordance with the details and specifications set out on the unnumbered plans submitted with the application and any details on the application form and on any supporting information received with the application except as amended by the conditions specified and imposed hereunder.

Note 1:

Nothing in this development consent whatsoever approves or authorises the commencement, erection or construction of any building, construction or subdivision works.

2. ROW at rear of site

Nothing in this approval authorises the use of the right of way at the rear of the site for car parking purposes.

OPERATIONAL CONDITIONS

These conditions are imposed to ensure that the use or operation of the development does not adversely impact on the amenity of the neighbourhood and the environment.

3. Hours of Operation

(a) **The premises may operate as a food shop with hours of operation between 7:00am and 12:00 midnight, seven (7) days per week.**

(b) **Notwithstanding (a) above the premises may trade till 1am on Saturday and Sunday mornings on a twelve (12) month trial basis from the date of this consent. Should it be proposed to continue operating between 12 midnight and 1am on Saturday and Sunday mornings beyond that twelve (12) month period a further Section 96 application shall be lodged. If a Section 96 application is not lodged or is not approved the operation of the premises shall comply with the provisions of (a) above. (It is recommended that any application for a continuation of the trial period be supported by an acoustic report).**

- (c) **After 10.00pm at night no music shall be played in the shop such that it is audible outside the shop or in the flat above.**
- (d) **Furniture shall not be placed in the outdoor eating area prior to 7am daily and shall be completely removed by 12 midnight (1am Saturday/ Sunday mornings during trial period). Placement and removal of the outdoor furniture shall take place in as quiet a manner as possible and tables and chairs shall be fitted with rubber or equivalent feet to minimise noise.**
- (e) **Packing up and cleaning operations shall be completed within half an hour after closing and no music shall be played within the shop whilst these activities are taking place.**

(Modified 10 March 2016)

4. **Noise Control - Offensive Noise**

To minimise the noise impact on the surrounding environment, the use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act 1997.

5. To ensure that adequate ventilation has been provided within the building the alterations to the existing mechanical exhaust system shall be designed, operated and maintained in accordance with the provisions of:
- (a) The Building Code of Australia
 - (b) AS1668 Part 1 – 1998
 - (c) AS1668 Part 2 – 1991

Certification from a suitably qualified person verifying compliance with the above shall be submitted to Council's Environment and Health Regulation Department within 90 days of this notice of modification of development consent. **(Added 31 May 2011)**

6. **Noise Control – Operation use of premises including Plant & Equipment (General)**

To minimise the impact of noise from the development, **the use of the premises and** all sound producing plant, equipment, machinery, mechanical ventilation or refrigeration systems, shall be operated and maintained in such a manner so that the noise emitted does not exceed a LAeq sound pressure level of 5 dB above the ambient background level when measured at the most affected point on or within any residential property boundary.

Notwithstanding the above requirements, after midnight any noise emitted by the premises shall be inaudible within any habitable room of any residential premises.

Note: The method of measurement of sound shall be carried out in accordance with Australian Standard 1055.1. **(Modified 10 March 2016)**

7. Cleanliness of Footpath Area

The management shall visually inspect the footpath external to the premises on an hourly basis to ensure the cleanliness of the immediate vicinity. If any rubbish or litter is observed it must be removed. **(Added 16 March 2012)**

8. Chairs

The management shall ensure that chairs are not available for the use of patrons after 12 midnight. **(Added 16 March 2012)**

9. Management of Patron Behaviour

The proprietor/manager of the shop is to take all steps necessary to ensure that no noise nuisance or antisocial behaviour occurs from persons entering, attending or leaving the premises. **(Added 16 March 2012)**

END OF CONDITIONS