



Report of Meeting

Independent Hearing and Assessment Panel

**Held on Tuesday, 19 September 2017
commencing at 6:00pm
in the Council Chambers,
Level 2, Administration Building,
4-20 Eton Street, Sutherland**

PRESENT: Justin Doyle (Chairperson/Expertise in Law), Jan Murrell (Expertise in Planning) and Christine Theodore (Community Representative with Expertise in Property Law).

Staff in attendance was the Manager Major Development Assessment (Mark Adamson) and Acting Manager Major Development (Carolyn Howell).

***** Disclosures of Interest
File Number: 2016/260430**

There were no disclosures of interest declared.

IHAP002-18 PROPOSAL: Section 96(2) Modification to DA09/0412 - Extension of hours of operation to opening at 7am 7 days per week and closing at 2.30am on Saturday and Sunday
PROPERTY: Lot 3 DP 19142 & Lot 4 DP 19142 - 58-60 Cronulla Street Cronulla
APPLICANT: Nazli Kaplan
FILE NUMBER: MA17/0197

Senior Constable Shade and Inspector McGrath on behalf of the Objectors, Mayor Pesce on behalf of the Supporters; Ms Kaplan, on behalf of the Applicant, addressed the Panel regarding this matter.

IHAP RESOLUTION:

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 is refused for the following reasons (revised from those recommended by the assessment officer):
 - a) The proposal is unacceptable having regard to the consideration identified at 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 a safe public domain, with a high standard of public amenity.
 - b) The proposal is unacceptable having regard to the consideration identified at s.79C(1)(a)(iii) in that the proposal does not satisfy the Assessment Principles of Clause 8.1 under Chapter 37 – ‘Late Night Trading’ outlined within the Sutherland Shire Development Control Plan 2015 (SSDCP2015) and particularly:-

"8. Assessment Principles

8.1 Assessment Principles for all Late Night Trading Premises

1 Hours of operation

- a. Appropriate hours are dependent on the nature and location of the proposal, ... and the potential safety, social or other impacts on the locality.*
 - b. Late night premises are encouraged within late night trading precincts; however as a general rule, premises should look to locate where ... amenity impacts will be minimised."*
- c) The proposal is unacceptable having regard to the consideration identified at s.79C(1)(b) in that the proposal is likely to result in unacceptable social impacts in the locality.
 - d) The proposal is unacceptable having regard to the consideration identified at 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.
 - e) The proposal is unacceptable having regard to the consideration identified at s.79C(1)(e) in that the extended trading hours are not considered to be in the public interest.
 - f) The site is not suitable for the extended trading hours sought because it is in the centre of the mall distant from other late night uses and the premises are too small to accommodate and manage waiting patrons.
 - g) 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
2. The report of the Assessing Officer is adopted subject to the additional observations below and with the exception that it was noted that the author of the sole submission was the owner of 58 – 60 Cronulla Street, but was not a resident as stated in the report.

PANEL COMMENTARY:

Site Visit

The Panel attended the site and inspected the surrounding locality. Particular attention was given to the relationship of the site to the local taxi ranks and railway station and surrounding licensed premises.

Presentations to Panel at the Public Meeting

The meeting was firstly addressed by Mayor Pesce who advised that he was speaking in support of the applicant who had initially approached him as a local Councillor.

He recounted that the Council had amended the DCP specifically to update the controls at Chapter 37 Paragraph 3.2 which identify three different zones to which differing extended hours are to apply – namely 'High', 'Intermediate' and 'Low'.

He reported that the aim of the Councillors who voted in support of the change when they voted to expand the hours available for Cronulla Mall was to extend the opportunities available to proprietors of businesses in the locality to enliven the area. He reported that at present after midnight residents in the Shire who want to eat outside licensed premises have to travel to Brighton Le Sands. He said that extended hours would often 'make or break' a business.

The Panel was then addressed by Senior Constable Shade and Inspector McGrath from the local Police command. Inspector McGrath was the officer responsible for the compilation of crime data. The officers reported that the statistics set out in the staff report recorded the police experience of significant violence and other incidents in the immediate vicinity of the premises. The observation of the police was that there was an improvement in relation to antisocial behaviour in the immediate area following the cessation of after midnight trade from the premises (although Panel noted that the improvement might be explained by seasonal factors).

Senior Constable Shade reported that it was an objective of the Police and the Local Liquor Accord (for business owners) to manage patrons leaving premises in the late hours to migrate to transport options. The police experience had been that people stopping for the purpose of eating food outside the subject premises resulted in patrons remaining unmanaged in the area, with the result being repeated antisocial behaviour. The incidents were reported to include a significant brawl and an assault on Police.

Upon questioning from the Panel, the police advise that the violence did not originate from the premises, but was associated with the premises encouraging people leaving licensed premises to remain in the area.

The applicant Ms Kaplan responded to these concerns by firstly stressing the importance of there being an area in the Sutherland district for entertainment. She said that the proprietors of the business had always assisted police in dealing with anti-social activities including reporting incidents when they observe them. She said that issues of noise impacts and loitering would be present whether or not the premises were open.

She explained that in response to the complaints about the premises, it was proposed that furniture would be removed from the mall and the proposal was to conduct sales only through a hole in the outer shutter door.

An acoustic report had not been prepared only because of the cost.

She said that opening hours to 1:30 AM would be accepted, and argued that to refuse the application would be to penalise the proprietors for the behaviour of others. She noted that the proposed opening hours allowed for an amenity for persons waiting for public transport.

Consideration of Issues

In substance, the Panel agreed with and adopted the staff report.

The Panel also had particular regard to the Assessment Principles for all late night trading premises at Chapter 37 Paragraph 8.1 (a) and (b) of the Sutherland DCP. Those principles stress that appropriate hours of operation are dependent on *'the nature and location of the proposal... the potential safety, social or other impacts on the locality'*, as well as stressing that additional hours were permitted as a *'general rule'*, with premises to *'look to locate where proposed uses are compatible with the surrounding development and amenity impacts will be minimised'*.

Particular features of these particular premises which the Panel found made them unsuitable for late-night trading were its location in the centre of the mall where they are separated from other late-night trading premises and the small floor area which did not allow for patrons to wait for their food off the street where they could be managed by staff.

Reasons for Variation from Council Officer's Recommendation

The staff's recommendation was adopted with minor changes to reflect these observations.

VOTES: 3:0

ASSESSMENT OFFICERS 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.

For Staff Report refer to IHAP003-18

The Meeting closed at 7:30 pm.