

**REPORT TO GEORGES RIVER COUNCIL
IHAP MEETING OF 21 JUNE 2016**

IHAP Report No	Item 1	Development Application No	DA2012/0094
Site Address & Ward Locality	801 King Georges Road, South Hurstville Blakehurst Ward		
Proposal	Section 96 Modification – Amend Condition 23 of Development Consent 94/2012 to increase the hours of operation to 5.00am – 4.00am on Monday to Saturday and 10.00am – 12.00am (midnight) Sunday for the whole of the premises		
Report Author/s	Senior Planner – Mr G. Hansell		
Zoning:	B2 Local Centre under Kogarah Local Environmental Plan 2012		
Date of Lodgement	29 January 2016		
Owner	Powerhouse Corporation Pty Ltd		
Applicant	As Above		
Submissions	90 including a petition with 33 signatories		
Cost of Works	N/A		
Issues	Impact on amenity of neighbourhood Social impacts Noise impact		
Recommendation	That the application be refused in accordance with the conditions included in the report.		

Site Plan



Executive Summary

Proposal

1. Council has received an application pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) to modify condition 23 of Development Consent No. 94/2012 and increase the hours of operation of the hotel to 5.00am-4.00am on Mondays to Saturdays and 10.00am-12.00am (midnight) on Sundays for the whole premises.

Site and Locality

2. The site is located off the western corner of King Georges Road and Connells Point Road, within the strip shopping centre of South Hurstville. The site is occupied by a two storey hotel premises known as 'Kings Head Tavern' and surrounded by a mix of commercial and residential development.

Zoning and Permissibility

3. The site is zoned B2 - Local Centre under Kogarah Local Environmental Plan 2012 (KLEP 2012). Development for the purpose of a 'pub' is permissible within this zone with consent.

Submissions

4. Eighty six submissions including a petition with thirty three signatories were received from local residents, property owners and community groups at the close of exhibition. A further four submissions were received at the time of preparing this report. All of the submissions object to the proposed modification. These submissions raise numerous concerns over the hotel operations and its impact on the amenity of the neighbourhood.

Conclusion

5. The application has been assessed having regard to the provisions of Sections 96(2) and 79C(1) of the EP&A Act 1979.
6. Whilst the proposed modification results in a development that is substantially the same as that originally approved, the extended trading hours will result in significant adverse impacts on the amenity of the neighbourhood. Accordingly, the proposed modification should not be supported.

Report in Full

Proposal

7. Council granted Development Consent No. 94/2012 for alterations and additions to Kings Head Tavern and use of the first floor as a restaurant (in addition to the approved use as a function space) on 30 April 2013.
8. The current application under Section 96(2) of the EP&A Act seeks the modification of condition 23 relating to the hours of operation. This condition currently reads as follows:

The hours of operation shall be limited to the following:-

<i>Monday to Saturday</i>	<i>5 am to 2 am</i>
<i>Sunday</i>	<i>10 am to midnight</i>

Excluding the first floor area and ground level outdoor courtyard between the indoor sunken lounge and stairway which shall have the hours of operation limited to the following:

<i>Monday to Saturday</i>	<i>5 am to midnight</i>
<i>Sunday</i>	<i>10 am to midnight</i>

9. The proposed modification seeks changes to the above hours of operation so that the whole premises is allowed to operate between 5am and 4am (the following day) on Mondays to Saturdays inclusive and between 10am and 12am (midnight) on Sundays.

The Site and Locality

10. The site is located off the western corner of King Georges Road and Connells Point Road, within the strip shopping centre of South Hurstville.
11. The site is occupied by a two storey hotel premises known as 'Kings Head Tavern'. A beer garden and on-site car parking area are located at the rear of the hotel building, towards the western corner of the site. The car parking area is accessed via a one-way driveway that enters the site via Connells Point Road and exits the site via King Georges Road.
12. Immediately adjoining the site are various commercial uses including a supermarket and service station and ancillary car parking areas. Opposite the site on the southern corner of King Georges Road and Connells Point Road is a five storey mixed commercial/residential building. Across King Georges Road to the north east and east are traditional 1-2 storey buildings used for various commercial purposes. Just beyond the strip shopping centre and approximately 60m to the south and 90m to the west of the site are residential areas characterised predominantly by villa/town house complexes.



Background

13. Over the years, there have been a number of applications considered by Council relating to the development and hours of operation of the hotel.
14. After consideration of a Section 82A Review application with respect to Development Application No. 644/2002, Council granted consent to extend the hours of operation of the hotel and the following condition was imposed:

The hours of operation shall be limited to the following:

<i>Monday to Saturday</i>	<i>5.00am to 2.00am</i>
<i>Sundays</i>	<i>10.00am to 12 midnight</i>
15. Additional conditions were imposed related to the use of the beer garden, noise management and security.
16. Council, at its meeting held on 12 June 2007, refused a Section 96 application to modify condition 2 of Development Consent No. 644/2002 so as to allow for unrestricted hours of operation (i.e. 24 hours/day and 7 days/week).
17. The applicant lodged an appeal against Council's decision with the Land and Environment Court on 12 July 2007. On 23 November 2007, the applicant discontinued the proceedings with costs being awarded to Council.

18. On 10 June 2008, Development Application No. 127/2008, which sought unrestricted hours of operation (i.e. 24 hours/day and 7 days/week), was refused by Council. The applicant subsequently lodged an appeal with the Land and Environment Court and amended the proposal to reduce the hours of operation sought in the application to part of the ground floor of the hotel for a 12 month trial period:

Monday to Thursday - 10.00am to 4.00am the following day
Friday and Saturday - 10.00am to 6.00am the following day
Sundays – 10.00am to midnight

19. On 6 February 2009, the Land and Environment Court dismissed the appeal and refused the application to extend the hours of operation of the hotel.
20. On 10 April 2012, Development Application No. 94/2012 for alterations and additions to Kings Head Tavern and use of the first floor as a restaurant (in addition to the approved use as a function space) was lodged with Council. As part of this proposal, the applicant indicated that the hotel was to retain the existing approved hours of operation for the redeveloped hotel.
21. Council resolved to approve the alterations and additions to the hotel and granted consent to these works on 30 April 2013 subject to conditions including condition 23 which retained the approved hours of operation for the existing elements but restricted hours of operation for the new work, as follows:

The hours of operation shall be limited to the following:-

*Monday to Saturday 5 am to 2 am
Sunday 10 am to midnight*

Excluding the first floor area and ground level outdoor courtyard between the indoor sunken lounge and stairway which shall have the hours of operation limited to the following:

*Monday to Saturday 5 am to midnight
Sunday 10 am to midnight*

22. A number of other conditions were imposed addressing issues related to the use of the outdoor areas, noise management and security.
23. A Section 96 application to modify condition 23 of the consent and extend the hours of operation to 2am on Mondays to Saturdays and to midnight on Sundays for the whole premises was lodged with Council on 29 October 2013. A considerable number of submissions were received and the application was subsequently refused by Council on 17 December 2013.
24. A Section 96 application to modify condition 23 of the consent and extend the hours of operation to 2am on Mondays to Saturdays and to midnight on Sundays for the whole premises was lodged with Council on 23 December 2014. A considerable number of submissions were received and the application was subsequently refused by Council on 31 March 2015.
25. The applicant lodged an appeal against Council's decision with the Land and Environment Court on 23 April 2015. During July 2015, following a conciliation conference, the applicant discontinued the proceedings.

26. The current Section 96 application to modify Condition 23 of the consent and extend the hours of operation was lodged with Council on 29 January 2016. Due to various inadequacies and inaccuracies in the information submitted, the application was not publicly exhibited and notified until late March after these matters had been resolved and again a significant number of submissions have been received.

Section 96(2) Considerations

27. Section 96(2) of the Environmental Planning and Assessment Act 1979 enables the consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

Is satisfied the proposed development as modified is substantially the same development for which consent was originally granted?

Comment

The proposed development as modified would represent substantially the same development for which consent was originally granted.

Has consulted with the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body?

Comment

Not applicable.

Has notified the application in accordance with the regulations or a development control plan?

Comment

The application was notified in accordance with the provisions of Section A2 – Public Notification of Kogarah Development Control Plan 2013 (KDCP 2013).

Has considered any submissions made concerning the proposed modification?

Comment

The numerous submissions received following notification of the application are discussed later in this report.

Section 79C Assessment

28. The following is an assessment of the application with regard to Section 79C(1) of the Environmental Planning and Assessment Act 1979.

(a)(i) The provisions of any environmental planning instrument

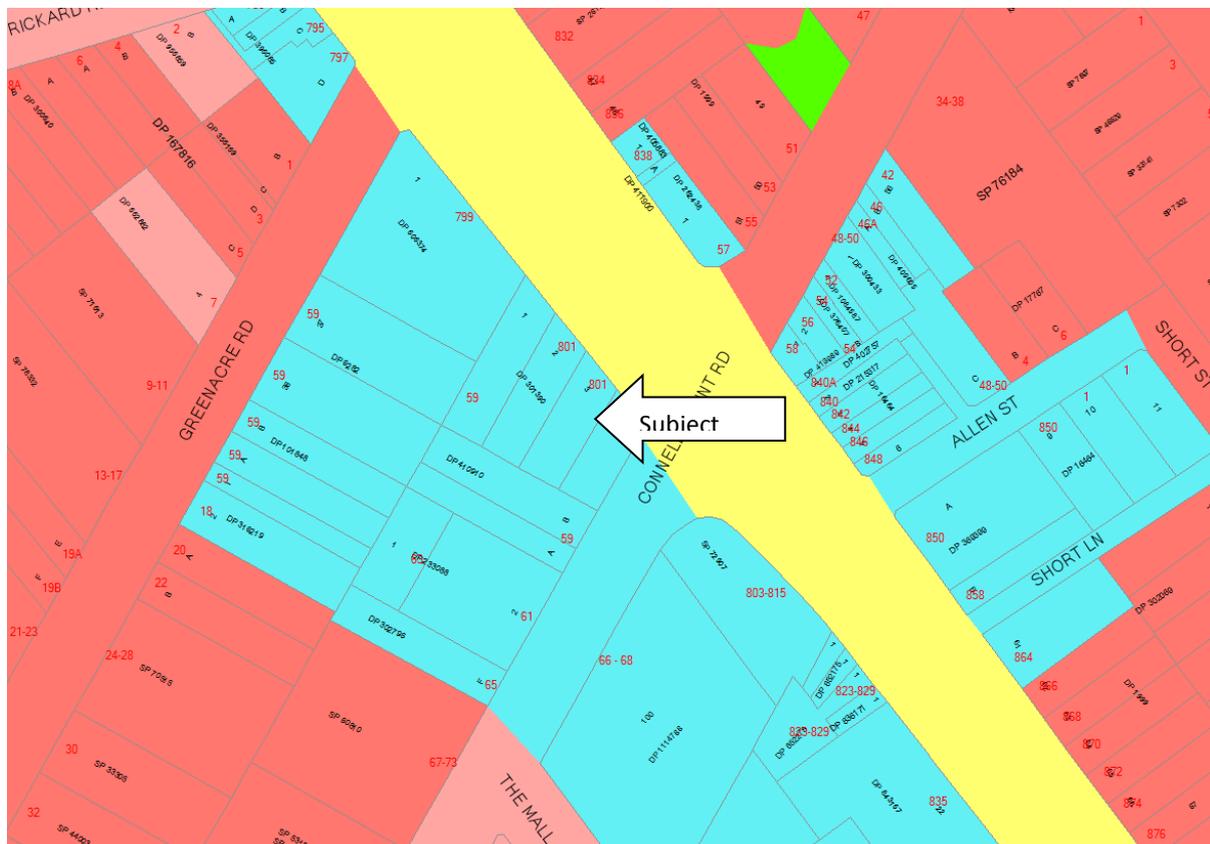
29. Kogarah Local Environmental Plan 2012 (KLEP 2012) commenced on 8 February 2013. Any application to modify development consent is subject to the provisions of KLEP 2012.

Kogarah Local Environmental Plan 2012 (KLEP 2012)

Part 2 – Permitted or Prohibited Development

Clause 2.1 – Land Use Zones

30. The site is zoned B2 - Local Centre under Kogarah Local Environmental Plan 2012 (KLEP 2012). Development for the purpose of a 'pub' is permissible within this zone with consent. The proposed development as modified is not contrary to the objectives of the local centre zone.



Part 5 – Miscellaneous Provisions

Clause 5.9 – Preservation of Trees or Vegetation

31. The proposed development does not involve the removal of any tree or vegetation subject to the provisions of this clause.

Clause 5.10 – Heritage Conservation

32. The subject site is not listed as a heritage item in Schedule 5 or within a heritage conservation area, nor are there any heritage items located nearby.

Part 6 – Additional Local Provisions

Clause 6.1 – Acid Sulfate Soils

33. The subject site is not shown as being affected by acid sulfate soils as identified on the Acid Sulfate Soil Map.

Clause 6.2 – Earthworks

34. The proposal does not involve earthworks or disturbance to the land.

Clause 6.3 – Flood Planning

35. The subject site has not been identified as a flood planning area on the Flood Planning Maps.

Clause 6.5 – Airspace Operations

36. The proposed development will not penetrate the Limitation or Operations Surface for both Sydney and Bankstown Airports and therefore provisions of this clause are not applicable.

Deemed State Environmental Planning Policy – Georges River Catchment

37. All stormwater from the development can be treated in accordance with Council's Water Management Policy and would satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment

(a)(ii) The provisions of any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

38. A Planning Proposal for the New City Plan to amend Kogarah LEP 2012 was on exhibition from Monday 30 March 2015 until Friday 29 May 2015. The New City Plan includes changes to zonings and the introduction of development standards in parts of the city to deliver a range of new housing options.

39. Specifically, the New City Plan proposes to zone the site as B2 - Local Centre. The proposed development as modified being for the purpose of a 'pub' will remain permissible with consent under this proposed zone. The proposed development as modified is not inconsistent with the relevant zone objectives as prescribed in the New City Plan.

40. There are no other draft planning instruments that are applicable to this site.

(a)(iii) The provisions of any development control plan

41. The proposed development as modified is subject to the provisions of the Kogarah Development Control Plan 2013 (KDCP 2013).

42. The objectives and controls for development in B1 and B2 zones as prescribed in Section D1 of KDCP 2013 are applicable. Whilst these objectives and controls are more relevant to proposed new buildings and alterations and additions rather than their use, there are some visual and acoustic privacy, safety and security objectives of relevance, as set out as follows:

- *New development is to ensure adequate acoustic privacy levels for neighbours and residents.*
- *Increase the perception of safety in public and semi-public open space, including streets, shopping centres, car parks, parks and malls.*

43. The proposed development as modified is contrary to these objectives in that the extended hours of operation will not ensure adequate acoustic privacy levels for surrounding residents and will diminish, rather than increase, the perception of safety in surrounding streets. These matters are discussed in detail later in this report.

(a)(iv) Any matters prescribed by the regulations that apply to the land to which the development application relates

44. Not applicable.

(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

45. The alterations and additions to the hotel as approved by Council on 30 April 2013 are substantial in scale and include additional floor space at ground and first floor levels, use of the first floor level as a restaurant and reconfiguration of the ground floor level 'licensed floor area' to accommodate enlarged gaming and outdoor areas.

46. The increased licensed floor area resulting from these alterations and additions is associated with an increased patron capacity of 590 persons, as reflected in condition 44 of the consent as follows:

A sign shall be displayed in a prominent position in the building specifying the maximum number of persons permitted in the building being:

- *Ground Floor – 450 persons*
- *First Floor – 140 persons*

47. Given the substantial scale of the building alterations and additions, the increase in patron capacity and the changing nature of the hotel operations, it was considered reasonable to impose a more restrictive set of trading hours as appropriate to the redeveloped hotel. The use of the hotel and restaurant facilities and associated outdoor areas (following redevelopment) for longer periods overnight and well into the early hours of the morning is likely to result in significant adverse impacts on the amenity of the neighbourhood. Having regard to the information submitted, there has been no cogent case presented to justify an extension of trading hours beyond those already approved for the redeveloped hotel.

48. To assist councils in the assessment of applications for an extension or intensification of a use which may have an adverse impact on residential amenity, such as a hotel, the Land and Environment Court has established the following planning principle:

First, is the impact of the operation of the existing use on residential amenity acceptable? If the answer is no, then an extension or intensification would be unacceptable unless there is no overall increase in impact or there are measures proposed which would mitigate the existing impact. Second, if the answer is yes, is the impact of the proposed extension or intensification still acceptable?

In answering the first question, it is not sufficient to assume that a use operating in compliance with its approval has an acceptable impact. A hotel could be approved without limits on patron numbers or hours of operation and, while its operation complies with this approval, may not achieve an acceptable impact. Moreover, the surrounding area may change and the attitudes of the community as to what is acceptable may also change.

49. It is apparent from the number of submissions received from local residents, property owners and community groups that the operation of the existing hotel is having an unacceptable impact on residential amenity in the immediate vicinity and wider locality of the site. These submissions indicate a high degree of anti-social behaviour occurring in surrounding streets which is attributed to patrons of the hotel, including drunk and disorderly behaviour, general rowdiness and noisiness, arguing and fighting, vandalism of private property, littering and racing of noisy vehicles in the surrounding streets.
50. The extended trading hours proposed, together with the increased size and population capacity of the hotel, are likely to result in an overall increase in impact on residential amenity in the immediate vicinity and wider locality of the site. The extended trading hours will make the premises a more attractive venue amongst the choice of licensed venues in the surrounding region. Not only will the extended hours allow for people to stay longer and consume alcohol for longer periods on the premises, but they will also attract additional patronage later into the night (including those engaged in 'pub crawls') as other venues close earlier.
51. Patron migration (i.e. the movement of patrons from one licensed premises to another) is a major issue for police. It is anticipated that patron migration will become more prevalent at the subject premises, as a result of the extended trading hours. Patrons that migrate from one licensed premises to another are often already intoxicated. When these patrons are refused entry to licensed premises, they are forced to remain in the neighbourhood of the premises and wait for transport or otherwise walk elsewhere. It is at this point that the majority of alcohol-related offences occur. These offences include loitering, assaults, malicious damage and other public nuisance offences. As a result, the police are forced to commit more resources to deal with these offences. The potential for these issues to arise cannot be discounted in this case.

52. There is a degree of persistent, intrusive and inappropriate anti-social behaviour that can be attributed to patrons departing from the hotel. This behaviour can only be intensified, with an influx of patrons arriving later in the night as other venues close and trading at the premises being extended well into the early hours of the morning, as a result of the redeveloped hotel. The context of the site being within a lower order suburban shopping centre, not well insulated from residential areas and having limited public transport options overnight and into the early hours of the morning means that noise and other impacts from anti-social behaviour upon local residents will be difficult to mitigate. Further, the measures outlined in the plan of management submitted with the application may go some way in addressing issues within and just outside the premises, but provide little confidence that existing impacts from anti-social behaviour occurring in the surrounding streets and further afield will be mitigated.
53. In summary, the proposed modification fails the first principle as the impact of the operation of the existing hotel on residential amenity is not acceptable. Further, the extended trading hours proposed is likely to result in an overall increase in impact on residential amenity and there are no measures proposed which would mitigate the existing impact. In coming to this conclusion, it is relevant and important to consider that the hotel has not yet been redeveloped and made operational in accordance with the subject development consent and hence Council has not had an opportunity to gauge the impact of the hotel in its redeveloped state. It follows that the extended trading hours proposed are unacceptable.
54. The extended trading hours proposed have the potential to increase noise impacts from a variety of sources including noise associated with amplified music, patrons using outdoor areas and plant and equipment, as well as noise from patrons walking to and from the premises and car movements.
55. Council's Environmental Health Officer has reviewed the acoustic assessment report submitted with the application. Concerns are raised over the report's reliance upon ambient noise monitoring conducted some four years ago and the associated data being out of date and potentially not providing a true reflection of current background noise levels. In the absence of more recent background noise information, Council cannot be satisfied that the proposed modification is not likely to cause adverse noise impacts on adjacent premises.
56. The proposed extended trading hours are not supported by Council's Environmental Health Officer, as the building the subject of the development consent has not yet been constructed and subsequently tested for its acoustic attenuation qualities in terms of condition 51 of that consent. In other words, Council has not had the opportunity to test the noise impact of the hotel (as redeveloped) based on the currently approved trading hours, let alone the extended trading hours proposed in the current application.

(c) *The suitability of the site for the development*

57. It is considered that the proposed development as modified is of a scale and design that is suitable for the site having regard to its size and shape, its topography, vegetation and relationship to adjoining developments.

(d) Any submissions made in accordance with this Act or the regulations

58. In accordance with the provisions of Section A2 – Public Notification of KDCP 2013, the application was placed on neighbour notification for a period of fourteen days. Property owners adjoining the site and in the wider locality were notified in writing of the proposal and invited to comment.
59. Eighty six submissions including a petition with thirty three signatories were received from local residents, property owners and community groups at the close of exhibition. A further four submissions were received at the time of preparing this report. All of the submissions object to the proposed modification. These submissions raise numerous concerns over the hotel operations and its impact on the amenity of the neighbourhood.
60. A common theme running through the submissions is that local residents are already experiencing adverse impacts from noise and anti-social behaviour in particular and that these impacts will be exacerbated by the extended trading hours in conjunction with the increased size and population capacity of the redeveloped hotel. The issues raised in the submissions are for the most part concurred with.
61. The range of issues raised in the submissions are summarised as follows:
- No change to locality to warrant extended hours
 - Set an undesirable precedent for other premises nearby to seek extensions to their trading hours
 - Increased patronage and traffic later into night
 - Increased traffic late at night resulting in less rest/more noise for residents
 - Extended hours not catering for locals/but for those outside the area
 - No community benefit
 - Could lead to increased violence
 - History of violent situations in hotel car park
 - Management plan will not be able to address impacts beyond the premises
 - Extended hours will lead to more parking problems due to their lack of parking on site
 - Sometimes there is fighting late at night in vicinity of pub
 - Current issues of vandalism – saplings being damaged
 - Bottles/rubbish on Connells Point Road
 - Lack of security observed
 - Attract undesirables from other suburbs e.g. Kings Cross
 - Hours should be reduced
 - Will import trouble from patrons ejected from other hotels
 - Residential area and expect quiet and good order
 - History of property damage from drunken youth – don't want a return to it
 - Encourage alcohol fueled violence
 - Hours after midnight are associated with worst rates of violent assaults
 - Trading hours are being shortened/not lengthened in other areas
 - Extended hours not needed given the residential context of the hotel
 - No public transport overnight resulting in potential for drink driving
 - Noise and anti-social behaviour
 - Speeding/noisy vehicles at night

- Contrary to what is happening in other areas like Kings Cross where hours are being curtailed
- No good reason for gambling in a suburban area to open from 5am
- Inadequate parking
- Increased pressures on police, health and other services
- Impact on local residents sleep and rest
- Could lead to violence and drunken behaviour
- Increased noise
- Increase security risks
- Discrepancies in submission regarding distances from other licenced premises
- Not appropriate in a mainly residential area
- Existing hours are more than generous
- Increased noise from unruly patrons
- Increased anti-social behaviour in the early hours of the morning
- Inadequate public transport resulting in additional noisy road traffic
- Extended hours will result in increased likelihood of alcohol related crime, noise, vandalism and littering
- Increased litter in the area
- Close proximity to homes
- Hours of operation more appropriate to city centre and not a suburban area
- Noise by cars and customers at closing time will impact residents

62. In accordance with Council's adopted protocol, the application was referred to the NSW Police (St. George Local Area Command) for comment on crime risk. The local police service are particularly concerned that the number of anti-social incidents including robberies, brawls and assaults will escalate should the trading hours be extended and recommend a number of conditions in the event of approval of the application. These conditions cover matters such as a trial period, surveillance technology, security arrangements, intruder alarm systems, lighting and more restrictive hours of operation for outdoor areas.

(e) The public interest

63. The issue of alcohol misuse, binge drinking, late night trading and related violence at venues has recently received significant media attention because a number of reports and studies have revealed a direct correlation between alcohol misuse and crime and anti-social behaviour.

64. A report prepared by the Auditor General Department titled "Working with hotels and clubs to reduce alcohol-related crime" dated April 2008 states that:

"Alcohol misuse has a significant impact on our community. It costs millions of dollars each day through lost labour, crime and health care."

"Crime and anti-social behaviour are often linked to alcohol misuse. Many incidents such as assault, malicious damage, offensive behaviour and theft are alcohol related."

Excluding domestic violence incidents, almost one third of alcohol-related assaults occur on licensed premises such as hotels and clubs. Many incidents occur on a Friday and Saturday night between midnight and 3am and are committed by males aged between 18 and 25."

65. It would appear that late night trading venues do have the potential to generate a significant level of crime and anti-social behaviour generally related to the misuse of alcohol. This places a significant cost burden on both the local and wider community in terms of lost labour, crime and health care.
66. It is considered that the proposed extended hours of operation for the hotel is likely to have a significant social cost and impact on residential amenity and is contrary to the public interest.
67. The proposed development as modified would conflict with the public interest and is therefore not supported.

Conclusion

68. The application has been assessed having regard to the provisions of Sections 96(2) and 79C(1) of the Environmental Planning & Assessment Act 1979.
69. Evidently, the hotel is already having an unacceptable impact on residential amenity in the immediate vicinity and wider locality of the site, particularly in terms of noise and other impacts arising from anti-social behaviour. The current hours of operation are generous enough in the circumstances.
70. The context of the subject site being within a lower order suburban shopping centre, not well insulated from residential areas and having limited public transport options overnight and into the early hours of the morning warrant the application of strict limits on trading hours, rather than the virtually continuous hours of operation six days a week as proposed by the applicant. The hours of operation sought by the applicant are more appropriate for licensed premises in high order town centres that are well insulated from residential areas and have a wider range of overnight and early morning public transport options (such as Hurstville town centre).
71. Whilst the proposed modification results in a development that is substantially the same as that originally approved, the extended trading hours will result in significant adverse impacts on the amenity of the neighbourhood. Accordingly, the proposed modification should not be supported.

Attachments

- Nil

Recommendation:

- a) That Council, as the consent authority and pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979, refuse the proposed modification to Development Consent No. 94/2012 dated 30 April 2013 to alter the hours of operation of the hotel known as 'Kings Head Tavern' at No. 801 King Georges Road, South Hurstville for the following reasons:
1. The proposed extension of the hours of operation would result in an adverse impact on the amenity of the surrounding residential area from the behaviour of patrons arriving at and departing from the premises (Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979).
 2. The proposed extension of the hours of operation would cause a significant noise disturbance to the surrounding residential properties (Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979).
 3. The proposed extension of the hours of operation is likely to result in an increase in crime and anti-social behaviour that creates a significant burden on the community and would be contrary to the public interest (Sections 79C(1)(b) & 79C(1)(e) of the Environmental Planning and Assessment Act 1979).
- b) That the applicant be advised of their right of appeal to the Land and Environment Court with regard to Council's decision in this matter.
- c) That those parties who made a submission be advised of Council's decision in this matter.